The American Labor Legislation Review

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INTRODUCTORY NOTE

Citizens interested in economic and political reforms very generally expend their enthusiasm and put forth their maximum strength in the effort to secure legislation and then forget or neglect the more important part in the achievement of their purpose—the enforcement of the law they have secured. Organizations interested in labor legislation have been no exception to this rule.

Following the excellent work of the New York Factory Investigating Commission from 1912 to 1914 and the large amount of legislation which incorporated its recommendations into what was practically a rewriting of the labor law of the state, no more important or widely discussed labor legislation has been adopted in the state than the act of 1915 which created the New York Industrial Commission. It was a radical step taken by a conservative legislature. It placed in the hands of five men grave responsibilities, and gave them great powers—administrative, quasi-judicial, and quasi-legislative—for the adaptation, specific application, and rigid enforcement of the protection which the statute law of the Empire State had thrown around its millions of wage-earners. It combined in one authority the functions of the largest labor department in any state of the union and the duties of the greatest workmen's compensation commission in the country. It touched intimately and at many points the welfare and the rights of at least 2,000,000 wage-earners and indirectly 1,000,000 more. These included hundreds of thousands of various nationalities, speaking many languages, some of them recent immigrants only partially adjusted to American life, but all living under the stress and strain of our most complex and severely competitive industrial conditions.

The change to the industrial commission method of administering labor law, exemplified by this New York statute, is among the most important and widely discussed changes in labor legislation in recent years. The change is somewhat analogous to developments in the field of public health legislation and still more closely akin to the trend in the regulation of public utilities. The earliest railroad rate laws, for example, attempted to prescribe the exact charges to be made by every carrier for all classes of transportation between all points. But it was soon found that this was not a task for which the legislature had the necessary technical knowledge and that confusion and unfairness resulted. Accordingly legislatures now go no further than to lay down the general principle that rates must be "fair and reasonable" and leave their exact determination to a board or commission. Similiarly, it has been found that in the crowded days of a legislative session it is well nigh impossible for legislators who are largely without industrial experience to enact scientific laws dealing with the technical matters of protective labor

legislation. In several progressive industrial states, therefore, the legislature has created an industrial commission to adapt and apply the principles of the statute law to the concrete conditions arising in diverse and rapidly changing productive processes. In their work industrial commissions have tended to stress the active co-operation of the groups affected. In code making they have hammered out rules with the help of employers, employees, and experts, who have practical first-hand knowledge of the subject considered. These rules go into effect with the advantages of practicality and the consent of representative members of the groups concerned. The factory inspector by educational work, explanation, and suggestion, may thus become not so much a detective whose interference is resented, as an expert adviser whose assistance is welcomed.

Another improvement in the industrial commission plan is its unification of a number of separate bureaus and boards into a single department. Labor law administration, under the old method, has been known to be divided in a single state among a dozen different enforcing authorities, leading to loss of efficiency. Accident prevention, for instance, can best be developed only when factory inspection and accident compensation are under the same head.

The power of industrial commissions which has particularly drawn the fire of their opponents is the power to vary and amend the labor law. Even under the most scientifically drafted code cases will arise in which literal observance of the law will cause unnecessary hardship. Most commissions are permitted in such cases to grant variations from the law if its general intent and spirit are preserved. This power is a conspicuous feature of the industrial commission idea, which, in the judgment of competent students, is one of the greatest advances in administration since factory inspectors were first provided by law. Wisconsin in 1911 and Ohio in 1913 were the first states to adopt this principle.

Nevertheless, at the time the New York Industrial Commission was created, many persons felt apprehensive of the wisdom of the step. It was freely predicted that the commission statute and the procedure it authorized would "disintegrate the whole structure of the labor law built up during the last thirty years," that it would "surely disrupt and disorganize" the great work before the existing departments, and result in "scuttling the state's policy of protecting the worker." It was also charged by many that the measure was intended merely as a "ripper" law by the political party in power, to oust large numbers of deserving employees and to open the door to political favoritism.

The American Association for Labor Legislation, as a result of previous study, not only advocated the establishment of a commission but regarded the law, even under the peculiarly difficult conditions in New York state, as one of the most promising steps which had as yet been taken in American labor legislation. For that reason it was not content to stop its efforts to improve the govern-

mental regulation of the industrial conditions affecting the health, safety, and well-being of wage-earners when the statute was signed by the governor and became law. It appointed at once a special Committee on the Administration of Labor Laws in New York and planned to secure an executive secretary who with the committee would cooperate with the new industrial commission and with other agencies, and in a critical and independent spirit, yet sympathetically, study the new problems as they arose, help secure an intelligent public opinion, especially among employers and employees, and bring scientific methods to the aid of every effort to secure the efficient, economical, and thorough-going administration of the new law. At the same time the New York Bureau of Municipal Research had undertaken a series of investigations and scientific studies of the administration of the state government, and had made valuable reports to the constitutional convention of 1915, but had not yet made an intensive examination of the labor department. The Bureau proposed to do this for the first year's administration under the industrial commission. Its purpose was to appraise the size and character of the problem of governmental management which the labor law created and the economy and efficiency of the methods employed by the governmental agencies charged with its administration, and to offer for the guidance of the legislature as well as of the administrative officers such constructive suggestions with respect to the financial resources needed or the amendment of the law as would secure the maximum results contemplated in the statute.

Happily these two efforts on the part of the Association and the Bureau were united in a cooperative undertaking which was begun in May, 1916. The plans were laid before the industrial commission and the assurance of its cooperation, essential to the complete success of such an enterprise, was secured. While the commission must not be held responsible for any of the recommendations or criticisms in this report it is only fair to say that it has put its records and facilities unreservedly at the disposal of the two organizations and has patiently and fully cooperated with this survey of its problems, methods of procedure, and activities. Several recommendations have already been put into effect by the commission and its subordinate divisions without waiting for this report to be completed. Many of the minor suggestions referring to office and routine administration have been made orally or in informal written memoranda as the field study proceeded.

It is also a pleasure to record that the commission gave in all seven half days to hearings at which the statements of fact and findings of this survey were taken up and discussed chapter by chapter with the representatives of the Bureau who carried on the field work and the representatives of the Association who assisted in its supervision and were jointly responsible for the preparation and editorial revision of the final report. The commission reserved

the right to file as part of this final report a statement of its dissent in case serious differences of opinion as to the facts disclosed could not be reconciled in these conferences. It is a further evidence of the cooperation of the commission and its manifest sympathy with the fundamental purpose of this survey—to make the initial experience of the New York Industrial Commission, its shortcomings as well as its achievements, of service to the whole country and to invite the freest discussion, criticism, and suggestion as to means of making its work more effective—that substantial agreement as to statements of fact has been reached and no dissenting memorandum accompanies this report.

The survey here recorded has taken longer and proven a more formidable undertaking than was anticipated. During its course more than thirty joint conferences have been held at the headquarters of the Association for Labor Legislation. Those who have directed it are fully aware of its incompleteness and imperfections, but believe that it contains so much of value for other states that are planning to organize industrial commissions to administer their labor laws, and for the people of New York state in order that they may have an intelligent and vigorous appreciation of the enormous tasks that have been imposed upon their industrial commission and may support and develop it accordingly, as to justify the immediate publication of these findings.

The survey, covering the first thirteen months of the commission's existence, *i.e.*, the period from June 1, 1915, to June 30, 1916, inclusive, shows that the commission has attacked its problems energetically and faithfully and with a deep sense of its responsibility as the authorized public agency for protecting the economic interests of the state's 3,000,000 wage-earners. Its members have been diligent and punctual in the performance of their duties, they have accomplished a tremendous volume of work, and the trend of the department under their direction has been toward greater thoroughness, reliability, and efficiency.

Perhaps the most notable achievement of the commission has been in a branch of the service which is by many considered first in importance, the division of factory inspection. Several incompetent inspectors have been dismissed, discipline tightened, and careless record keeping abolished. Complaints are more promptly investigated, and violations vigorously followed up to early compliance or prosecution. A "block" system for registering factories in Greater New York and recording the activity of inspectors has been installed. During the last nine months covered by the survey nearly 40,000 regular factory inspections were made, more than 116,000 orders were issued and more than 125,000 compliances secured. The division of mercantile inspection is also doing creditable work in as much of the field as the limited size of its force permits it to cover, with nearly 27,000 inspections, 23,000 orders, and 18,000 compliances recorded in the same period. The same may be said of the bureau of fire hazards, boilers, and explosives,

which is charged with the duty of inspecting about 5,000 factory boilers and 1,000 explosives magazines, many of them in situations difficult of access.

Hardly less striking are the results in administration of workmen's compensation, on which, from the beginning, more than half the commission's time has been spent. With 315,000 industrial accidents occurring annually in the state, of which 60,000 develop into compensation cases, new and intricate questions of interpretation are constantly arising. Yet so ably have these been handled that out of 156 appeals from compensation rulings actually decided by the courts between the time the compensation law went into effect and the close of the survey, the department's rulings were reversed in only twenty-four. Benefits amounting to $9,000,000 in cash and $3,000,000 in medical care are now being annually given under the law with little friction. Up to the close of the survey the state insurance fund had written more than 9,000 policies, comprising about 12 per cent of the total volume of workmen's compensation insurance business in the state, and more than any other carrier except one; despite the opposition of private competitors its business is steadily increasing and it is on every hand demonstrating its superior economy and security.

The bureau of employment, with its five main branches, has grown in favor with skilled workmen and with large employers until in its last nine-months fiscal period it recorded nearly 30,000 actual placements. Consistent and effective publicity work is conducted, the procedure planned to prevent the offices being turned into strike breaking agencies is scrupulously followed out, and they are operated on sound business principles.

Through its bureau of statistics and information, the oldest part of the labor department, the commission has issued a number of valuable special bulletins on accidents, accident and disease prevention, unemployment, and labor legislation. This bureau has also undertaken the tabulation of data on inspections, compensation payments, and other matters, and edits the department's annual report. More important still from the standpoint of keeping employers and employees informed is the publication since October, 1915, of a monthly *Bulletin* containing reports of the various bureaus, variations granted, and court decisions.

Increased effectiveness of the bureau of mediation and arbitration is shown by a growing number of interventions and of settlements in industrial disputes. The bureau in the last nine months of the survey made ninety-four interventions, fifty-four of which were successful; held two formal investigations upon authorization by the commission; and officiated in one case of voluntary arbitration, its award being accepted by both sides.

By consolidation of offices and by eliminating some duplication of statistical work, it is estimated that the commission has made an annual saving to the state of fully $200,000.

There are, however, certain phases of its activity in which the commission has fallen short of what might reasonably be expected of it. One of the main purposes for the establishment of the industrial commission, for instance, was to provide a body to supervise the drafting, by joint committees of employers, employees, and technical experts, of detailed regulations applying the general standards of the labor law to specific plants and industries. Preliminary activity in this direction the commission assigned to a specially-created bureau of industrial code, but for the first year the total results comprise three amendments to existing codes, one reenactment, and one brief new rule. Not until months thereafter was the bureau's first real code, on boiler construction and maintenance, ready for printing and public hearing.

A factor which contributed much to this inactivity is the unsatisfactory operation of another and older agency, taken over from the labor department. The division of industrial hygiene, which was established in 1913 with high hopes for its becoming a scientific agency for research in industrial safety and sanitation, has proven a failure. Hampered from the start by unfit personnel, used by the commission for routine work when this became pressing, without an adequate comprehension of its special task or a generous spirit of cooperation with other bodies, the division has done little of the type of work for which it was created.

Another bureau which is not living up to its opportunities is that of industries and immigration. In the course of a year it makes some 5,000 inspections of lodging houses, docks and ferries, employment agencies, labor camps, and other places where immigrants are in danger of being victimized, and advises about 2,000 aliens who apply to it for help either in person or by letter. But it lacks large-scale constructive plans for improving the conditions of aliens in the mass, such as their systematic distribution. Cooperation with other public and private agencies interested in the same problems is not well developed.

Somewhat similar is the situation with regard to the division of home work inspection. Nearly 15,000 tenements are licensed to receive home work, and more than 2,000 factories are permitted to give it out, and while the division has shown increased activity in enforcing the law in these places its efforts are still in many ways lax. On such matters as stopping unlicensed work, or revoking tenement licenses or factory permits, the letter of the statute is seldom applied. The difficulties in the way of strict application of the law are, however, not to be underestimated. Prohibition of home work has come to be regarded by many experts as the only practical solution.

Disappointing, too, is the experience with the industrial council. This advisory body, composed of equal numbers of representative employers and employees, was expected actively to cooperate with the commission in deciding questions of administrative policy. In-

stead it has received few invitations to cooperate and has for the most part merely marked time. Its main and important contribution has been in bringing workmen and manufacturers together in a fuller understanding. Undoubtedly the fact that its members are not paid expenses for attending meetings has interfered with its efficiency.

While under the industrial commission a great deal has been done toward making the civil service requirements more effective than heretofore, the system is still marred by serious administrative defects. Lack of high preliminary qualifications for admission to the department, inequitable provisions for advancement, and absence of adequate standards of work, tend to deter or to discourage persons of capacity while others less efficient and active remain.

A function of the commission complementary to that of code making is the granting of variations from the law or from the code, in cases where equal protection can be secured in some other way which will obviate practical difficulties or unnecessary hardship. The commission has also power to modify its orders issued under the law or the code. In practice much confusion has grown up in the handling of these two distinct classes of matters, so that it is not always clear whether a modification or a variation is being granted, *i.e.*, whether old law is being enforced or new law is being made.

In the prosecution of offenders considerable looseness has been shown by the courts. In addition to handling 270 appeals concerning workmen's compensation and collecting $12,800 on awards during the closing nine months of the survey, the legal division appeared in 2,483 prosecutions for violation of the labor law. In those which involved failure to do something in accordance with the law, the tendency of the courts was not to impose the penalty but to continue the case pending compliance. In cases involving an act against the law, reluctance to levy the penalty, though not so marked, was nevertheless present. Such procedure tends to multiply violations, since delinquents feel that the court stands between them and the commission and that the orders of the latter are not necessarily final. The commission, also, is somewhat at fault in holding in abeyance many cases which it considered less important.

The commission, despite the high quality of much of its work, has spent a large amount of time on minor routine matters which could advantageously have been left to bureau heads or to the secretary. On the other hand the hard and fast assignment to separate commissioners of bureaus or departments of activity has interfered with the transmission of information and with the acquaintance of each commissioner with important details arising in other bureaus than those he was supervising.

Included in this report are a number of suggestions and recom-

mendations designed to aid in overcoming the difficulties against which the commission is contending. Especially important are recommendations dealing with further improvement in civil service methods, larger appropriations and a larger force for many departments of the commission's work, more careful differentiation between procedure in making modifications of orders and in granting variations from the law or code, more energetic prosecutions, expansion of the industrial council to include representatives of the general public, the desirability of abolishing home work, and diminishing the amount of routine work of commissioners.

On the whole, however, this survey and review of the operation of the industrial commission act, after due allowance is made for the exceptional difficulties and circumstances of the first year of its administration, confirms the opinion that the act is one of the most beneficial pieces of labor legislation ever adopted by the New York legislature. Not only have its fundamental principles been vindicated, but under its provisions the enforcement of the state's existing labor laws has been improved. This act, moreover, is a progressive piece of legislation and creates new conditions as the result of its operation. That modifications in its terms or in its methods of administration, necessitated in part by these new conditions themselves, are required from time to time, is not a cause for discouragement but rather furnishes a new opportunity to the forward-looking worker for industrial betterment.

Acknowledgment is here made of the valuable assistance in two particularly difficult and useful parts of the survey relating to variations in the law granted by the commission, and to the conduct of prosecutions, which was received from Professor Thomas I. Parkinson of Columbia University and his associates of the Legislative Drafting Research Fund. The field work and preparation of the first draft of the report have been under the direction of Mr. Herschel H. Jones of the staff of the Bureau of Municipal Research, upon whom the major burden of the work has fallen. Mr. Jones has had the cooperation of Dr. C. E. McCombs of the same staff in preparing the section on the division of industrial hygiene and of Mr. J. H. Johnson in preparing the section on civil service. Mr. John D. Cremer, Jr., Mr. Henry W. Toll, and Miss Lucile Davidson of the Training School for Public Service, a department of the Bureau, have also assisted in important parts of the field work. Mr. Solon De Leon and Miss Margarett A. Hobbs, of the staff of the American Association for Labor Legislation, have had charge of the final preparation and editing of the report. In maintaining general supervision over the entire survey the undersigned have been assisted by Irene Osgood Andrews, also of the Association staff.

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CHAPTER I

Development of Agencies for Administering Labor Legislation in New York State

In New York, as in other states both in this country and in Europe, the first laws for the protection of labor provided no enforcing authority. The theory was that the aggrieved workman, or some third person interested in his welfare, would take up the case against the employer and secure justice.

The experience with one of these early statutes is fairly typical. A New York law of 1881 required seats for females in mercantile and manufacturing establishments. Violation was a misdemeanor, but no penalty was provided, and no machinery for administration. The workers were unable or afraid to prosecute and the few attempts at enforcement made by philanthropists met with failure. The law therefore remained a dead letter.

Bureau of Labor Statistics

So firm a hold, however, had the principle of laissez-faire on people's minds that even the working men and women who were most affected by the failure of labor law to serve its stated purpose presented no organized demand for governmental enforcement. Instead, for decades they contented themselves with appeals for a bureau of investigation, whose publications, they hoped, would afford the basis for campaigns in behalf of further protective legislation. After the creation of the world's first such bureau in Massachusetts in 1869 these apppeals gathered force, and for thirteen successive years the New York Workingmen's Assembly, one of the state's early central labor bodies, organized in 1865, submitted formal petitions to the legislature on the subject. In 1883 the movement was successful, and on May 4 the law establishing the New York State Bureau of Labor Statistics, the ninth agency of its kind in the country, was passed unanimously.[1]

[1] Laws 1883, C. 356.

The bureau consisted of a "commissioner of statistics of labor" appointed by the governor with an annual salary of $2,500, and a clerk at $1,200. The only qualification prescribed for the commissioner was that he be "some suitable person." His duties were to:

> collect, assort, systematize and present in annual reports to the legislature, within ten days after the convening thereof each year, statistical details relating to all departments of labor in the state, especially in relation to the commercial, industrial, social and sanitary condition of workingmen, and to the productive industries of the state.

It was not until 1886 that the commissioner was given power to enter factories and secure information.

Factory Inspection Department

Meanwhile the growing strength of the Knights of Labor which in 1878 had cast off its veil of secrecy and become the outspoken champion of the wage-earners and farmers, and the advent in 1881 of the American Federation of Labor, were assisting to fix attention on industrial conditions. A number of philanthropic organizations interested in the welfare of women and children had also become active, particularly the Children's Aid Society and the New York Society for the Prevention of Cruelty to Children. The futility of protective statutes without provision for their enforcement became increasingly evident, and the factory act of 1886, which for the first time in New York set an age and an hour limit on children's employment, established also the state's first enforcing authority in the labor legislation field. The governor was required to appoint a factory inspector at $2,000 and an assistant factory inspector at $1,500, for three-year terms, and $2,500 annually was allowed for traveling expenses.[2] The new officials were authorized to enter factories and workplaces at all reasonable hours, and while they worked independently of the commissioner of labor statistics they were required to report to him annually.

In 1887 factory inspection was made an entirely separate department, with eight deputy inspectors at $1,000 in addition to the chief and his assistant. The chief inspector established eight inspection districts and assigned a deputy to each. The law which made these changes contained, furthermore, the first New York requirements

[2] A special "deputy constable" to enforce child labor legislation was appointed in Massachusetts as early as 1867.

for factory safety appliances, such as guards for gears and belting, automatic belt shifters, and fire escapes; accidents were to be reported within forty-eight hours. In 1890, through the efforts of the Working Women's Society, the forerunner of the New York Consumers' League, a law was enacted adding to the staff eight women factory inspectors, probably the first in the world.

Department of Labor

By the close of the century the factory inspection department had taken on, as the labor law of the state expanded, a number of new duties, such as enforcing the apprenticeship act, a weekly payment of wages act, and a women's hour law, licensing and regulating tenement work, and inspecting bakeries and boilers in factories. It had a staff of fifty inspectors, ten of whom were women. The independent office of mine inspector, established in 1890, had been merged with it in 1895. There still existed, in addition, the old bureau of labor statistics, under which a public employment bureau had been opened in New York City in 1896, and the state board of mediation and arbitration, created in 1886. The wastefulness of maintaining these three independent agencies, all dealing with labor questions, was the reason given, in 1901, for their consolidation into the New York State Department of Labor. At the head of the new department was put a commissioner of labor at an annual salary of $3,500, whose term was four years. Two deputy commissioners were placed in charge of the bureaus of factory inspection and of statistics, while the commissioner and these two deputies assumed the duties of the board of mediation and arbitration. The law still authorized fifty factory inspectors, but a heavy cut in appropriations served to reduce the actual number to thirty-six.

The period immediately before and after the organization of the unified department of labor was marked by the launching of numerous voluntary agencies for the improvement of labor conditions and of labor legislation. The pioneer New York Consumers' League of 1891 gave the impetus for the formation of a national league in 1899. The New York Child Labor Committee began work in 1902, followed by the national committee in 1904; the National Women's Trade Union League, begun in 1903, opened a New York branch in 1904; and in February, 1906, there was organized, with headquarters in New York, the American Association for Labor Legislation. One

of the first results of this development was the adoption in 1903 of a highly advanced child labor law, with very thorough provisions for enforcement, and the succeeding legislature passed an act for the regulation of private employment agencies. In his annual reports at this time the commissioner of labor constantly stressed the total inadequacy of his force to meet the new duties that were rapidly piling up, and succeeded in 1906 in securing an increased appropriation sufficient to enlarge his inspection staff within two of the statutory maximum of fifty. This marks the beginning of a continuous and rapid growth of the labor department. Practically every year additional employees were taken on. Although the bureau of employment was abolished because of inefficiency in 1906, the bureau of mercantile inspection was added in 1908, the bureau of industries and immigration in 1910, and the division of industrial directory in 1911. Between 1907, and 1913 when it was reorganized, the department grew from an office with ninety-six employees and a yearly expenditure of $154,798 to an arm of the state government commanding the services of 227 persons and expending annually the sum of $505,640, or more than half a million dollars.

Commission on Employers' Liability

In 1909 the nation-wide interest in workmen's compensation found expression in New York in the creation of the "commission on employers' liability and other matters," one of the first in the country. The disclosures of this commission on the magnitude of the industrial accident problem in the state, the inadequate enforcement of the safety statutes, and the inefficiency of the employers' liability system as a means of securing financial relief for the victims, produced a profound impression. The compensation act recommended by the commission and adopted by the legislature in 1910 was, however, declared unconstitutional early the following year in the famous Ives case.[8]

Factory Investigating Commission

On March 25, 1911, the day after the New York Court of Appeals handed down its decision declaring the workmen's compensation law of 1910 unconstitutional, a fire broke out in the Triangle Waist Company's factory in the New York City loft district which cost the

[8] Ives *v.* South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431 (1911).

lives of 145 employees, mainly women and girls. The indignation of the community rose to white heat, and a hasty investigation revealed conditions in other manufacturing establishments which were a standing menace to thousands of toilers in the greater city. Appeal was made to the governor, and in June the legislature created a special factory investigating commission of nine members to inquire into manufacturing conditions throughout the state.

The dissatisfaction with factory legislation was based upon the existence of four fundamental defects. First was the incompleteness of labor laws. It had been the custom of legislators to specify in the law the danger points which were to be guarded, and thus many hazards had been overlooked. A second defect was the absence of direct responsibility. Many laws placed no obligation whatever upon an employer to safeguard danger points nor upon an employee to aid in maintaining safety except "in the discretion of the commissioner of labor," or "if the commissioner so directs." Under these statutes, no protective devices had to be provided until the inspector called and ordered them. A third fundamental defect was excessive rigidity. Legislators had often attempted to define the exact nature of the protection to be furnished, resulting in hard-and-fast statutes impracticable of enforcement in diversified establishments and incapable of meeting the shifting conditions of rapidly developing industry. The fourth defect, in part the result of reaction against the one just mentioned, was absence of well defined standards. The legislature, lacking expert knowledge of conditions in factory, workshop, or mine, frequently admitted its inability to frame helpful standards by vaguely requiring that dangerous machinery be "sufficiently guarded," usually "where practicable," or that workrooms be "sufficiently ventilated." The interpretation and enforcement of these indefinite laws by poorly paid and poorly trained inspectors, often mere political placeholders, produced confusion and lack of uniformity, and brought this method of "policing" industry into general disrepute.[4]

Labor Department Reorganized

Considerations such as these had induced Wisconsin in 1911 to adapt to factory regulation the plan which was already in successful operation for railroad rate regulation. That is, it required work-

[4] "Scientific Standards in Labor Legislation," by John and Irene Andrews. *American Labor Legislation Review*, Vol. I, No. 2, June 1911, p. 123.

places to be made "safe," and established an industrial commission to work out, with the cooperation of employers and employees, specific regulations for each industry. Ohio adopted the "Wisconsin idea" in 1913. Much study was given to it in New York,[5] but not feeling that the plan had sufficient popular support the factory investigating commission brought in a compromise proposal. The single headed department of labor was retained, but to it was added an "industrial board" composed of the commissioner and four associate members, which was empowered to make rules, after public hearing, covering the health, safety, and comfort of employees under its jurisdiction. A division of industrial hygiene for technical research was established, and the state was divided for purposes of factory inspection into two main districts. The salary of the commissioner was increased to $8,000; two deputies were provided for at $5,000 and $4,500 respectively, and the four associate members on the industrial board received $3,000 each. The total staff of the department was increased to nearly 350 persons with salaries graded down to $1,200 for the lowest rank of inspectors, and the budget for 1914 reached the sum of $691,220. All inspectors not required to have special scientific or technical qualifications, and all employees of lower grades, were placed by law under civil service, but influences, believed to be largely political, led to numerous exemptions from this rule.

Under the new plan, which went into effect March 28, 1913, much progress was made. The industrial board exercised its powers cautiously. Its safety regulations were on the whole well considered, and it managed with good judgment the delicate matter of granting temporary exemptions under the weekly rest day law. Widespread unemployment during the winter of 1913-1914 united the City Club of New York, the American Association on Unemployment, the American Association for Labor Legislation, and other bodies in the demand for an up-to-date system of state employment offices, and in April, 1914, an excellent bill was passed by the legislature. At about the same time the commissioner established a legal bureau to give advice and assistance in prosecuting cases.

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[5] See for instance the discussion at the sixth annual meeting of the American Association for Labor Legislation, *American Labor Legislation Review*, Vol. III, No. 1, February, 1913.

Workmen's Compensation Commission

Distressing as was the setback in the Ives case, the workmen's compensation movement in New York was not destroyed. A constitutional amendment was pushed through two successive legislatures, as required by law, and adopted by the people at the November, 1913, election. Within two months, at a special session of the legislature, a bill, far more liberal and thorough than the earlier measure, was carried to passage. For the administration of the act a state workmen's compensation commission of five members was created, with power to engage necessary assistants, including physicians, attorneys, accountants, investigators, and clerks. The chairman of the commission received $10,000 a year, the other members $7,000. The law also provided for a state fund in which employers might insure their compensation risk.

The Industrial Commission

While these developments were taking place, a state fire marshal had been appointed in 1911, whose staff was authorized to enforce certain laws and ordinances in relation to boiler inspection, prevention of fires, the storage of explosives, and the adequacy of fire escapes.

Again, therefore, as in 1901, the state was in 1915 confronted with waste and duplication in the administration of its labor law. To the overlapping inspections of fire marshal and labor department were soon added the visits of safety inspectors of the state insurance fund under the workmen's compensation commission. Complaint was made that the recommendations issued by these safety inspectors to the factories insured in the fund sometimes conflicted with the orders of the factory inspectors. The requirement that accident reports be sent both to the labor department and to the compensation commission created among employers an irritation far out of proportion to its importance. Furthermore, evidence was accumulating that the workmen's compensation law could not properly fulfil one of its main functions, that of preventing accidents, unless its administration was closely bound up with factory inspection.

Taking advantage of this situation, a conservative legislature sought in 1915 to hurry through a hastily drafted, inadequate, and unworkable bill proposing to consolidate the labor department and the compensation commission. Organized labor was a unit in op-

posing the consolidation, while the Associated Industries, representing 467 employers, urged immediate enactment of the bill. The Association for Labor Legislation declared in favor of the industrial commission form of administration of all labor laws, including workmen's compensation, but opposed this bill. Out of the clash of contending interests came a request for a real commission measure, which was carefully drafted and in a few weeks became law.[6]

This new law included in its provisions ideas worked out and tested by the pioneer industrial commission created in Wisconsin by the law of 1911 and copied two years later by Ohio. It thus appeared to be directly in line with the tendency in American legislation, the New York Industrial Board created within the department of labor in 1913 being itself a halting step in the same direction. Under its terms an industrial commission of five members was to be appointed by the governor for six-year terms expiring different years, with salaries of $8,000. The existing bureaus and their staffs were retained intact, and each commissioner was to be made personally responsible for some portion of the administrative work. The commission had all the powers of the previous industrial board for the formulation of rules and regulations, and was also to administer the workmen's compensation law. Moreover, to secure uniform and expeditious enforcement, in the interests of both employer and employee, it was provided that the question of legality or reasonableness of a commission order could not be used as a defense in case of prosecution for alleged violation, but must be raised directly in proceedings for the repeal or modification of the order.

An unsalaried industrial council, with advisory powers only, was to be appointed by the governor, five members to represent employers and five to represent employees. Its purpose was not only advisory to the commission in matters of general policy, but also to the state civil service commission in certifying lists for appointments in the department, as well as to bring representative employers and labor men together for conferences on questions arising in the administration of the laws. As under the old law, temporary joint committees might be appointed to assist in the formulation of rules for different trades.

[6] The measure was drafted at the request of the senate committee on labor and industry, by the Legislative Drafting Research Fund of Columbia University, following recommendations of the American Association for Labor Legislation.

Provision was made for the appointment of three deputy commissioners, a secretary, and a counsel with two assistants. All other employees were to be selected from competitive or non-competitive civil service lists, special provision being made to keep positions from becoming political plums under the "exempt" classification. Thus it was expected that a higher grade of persons, including qualified industrial workers with practical experience, would be attracted by the prospect of permanence and advancement.

A new feature of the law authorized the commission to act for individual employees who had been subjected to fraud, extortion, or other improper practices, but who had not the means or the opportunity to seek redress individually, in the same manner as the Interstate Commerce Commission and several state public utility commissions take up the cases of individual shippers. This provision, and the requirement for a permanent advisory industrial council, marked important new steps in the development of labor law administration in America.

Thus among the advantages which its advocates hoped to secure through the commission were economy in inspection and the avoidance of the friction caused by rival bodies of inspectors, elimination of duplicate reports and statistics of accidents, consolidation of all interests for efficient accident and disease prevention, and the general introduction of the rule of cooperation instead of "clubbing" in the administration of the labor law.

CHAPTER II

Problem Confronting the New York Industrial Commission

It was no easy task that confronted the New York State Industrial Commission when it took office on June 1, 1915. It was responsible for the enforcement of laws affecting the lives, health, and welfare of the wage-earners in the largest industrial state in the union. Its work involved the supervision of labor conditions not only in the largest city of the nation but in every town and hamlet in an area as large as England itself.

Wage-Earners in New York State

According to the United States Census of 1910, there were in the state of New York 4,003,844 persons engaged in gainful occupations, of whom 983,686 were women and 65,194 were children from ten to fifteen years of age inclusive. Deducting some 800,000 employers, farmers, and independent workers, leaves a total of probably more than 3,000,000 wage-earners. In factories alone the latest edition of the *Industrial Directory of New York,* published by the labor department in 1913, records a total of 1,276,048 employees, of whom 886,215 were men, 373,907 were women, and no fewer than 15,926 were boys and girls ranging in age from fourteen to sixteen, girls being considerably in the majority. As the values created by the factory employees alone amount to nearly $2,000,000,000 annually, conservation of a wealth-producing force of such magnitude is obviously of the highest economic importance. Yet there occur in the state some 315,000 industrial accidents a year, an average of more than 1,000 every working day.

Besides its vastness, this industrial army is characterized by extreme diversity of race and language. Thirty per cent of the population of the state is foreign born. New York City, where about five-eighths of the factories of the state are located, contains one-nineteenth of the total population of the country but about one-

seventh of the total foreign-born population. While 15.8 per cent of the population of the city are native born of native parents, 45.4 per cent were born abroad. The unfamiliarity of these new arrivals with the English language makes the task of protecting them from industrial hazards and from fraud a particularly difficult one. Even in the settlement of workmen's compensation claims, states the deputy commissioner in charge of that bureau, "The problem has been at least 25 per cent harder because of the foreign character of the working population. A day's hearings on compensation cases will bring before the commissioners samples of almost every nationality, necessitating in a large percentage of cases the services of interpreters. We have had hundreds of cases come to our notice where claimants have signed papers about whose contents they know nothing."

Number and Diversity of Establishments

The United States Census of Manufactures for 1914 enumerated in New York 48,203 factories, or more than one-fifth the total number of manufacturing establishments in the United States, as many as in Pennsylvania and Illinois combined, and over 18,000 more than in Illinois and Massachusetts together.

In addition to factories the commission is required to enforce labor laws in 30,000 mercantile establishments, almost 13,000 tenements licensed for home work, and 1,800 bakeries and confectioneries in all parts of the state outside the two first class cities of New York and Buffalo. All hotels, restaurants, places of amusement, barber shops, shoe-polishing stands, and offices, as well as mines and quarries, tunnel and caisson work, and 700 milling and malthouse elevators, are likewise affected by legislation under the jurisdiction of the commission.

Factory Congestion

Congestion of working conditions in the large cities, especially in New York, seriously complicates the situation. The huge loft buildings and the crowded tenements of the metropolis present administrative difficulties such as probably no other department of labor in this country or in Europe has had to face.

"New York City, and the borough of Manhattan especially," states a report on fire hazards in factories published by the Joint

Board of Sanitary Control in the garment trades in December, 1915, "are unique in that their industries are housed in multiple loft buildings. There are said to be at least 16,000 multiple loft buildings in Manhattan borough alone. Most of these buildings are over six stories in height. In this loft zone there are daily at work at least a million men and women."

Functions of the Commission

The wide range of functions which the commission is called upon to exercise may be briefly summarized in four main groups, as follows:

1. Functions having to do with the labor contract or directly with the person of the workman, including:
   (1) Enforcement of the legislative standards as to age of entering employment, hours of labor, one day of rest in seven, special protection of female employees, etc.
   (2) Protection of the health of employed children, and of adults in injurious or dangerous occupations, through physical examinations in their places of employment.
   (3) Distribution of the cost of industrial injury and loss of life, through the administration of the workmen's compensation law, including the state insurance fund.
   (4) Prevention or adjustment of industrial disputes through mediation or arbitration.
   (5) Bringing together of those seeking employment and those having it to offer.
   (6) Enforcement of provisions relating to the political and legal rights and privileges of wage-earners.
   (7) Enforcement of provisions relating to labor on public works and public contracts.
   (8) Enforcement of special regulations governing railway employees.
   (9) Protection of immigrants from fraud and exploitation, improvement of their living conditions, and promotion of their assimilation.
2. Functions having to do with places where work is performed, including the inspection and supervision of working conditions in the following groups of places for each of which there are separate statutes, often supplemented by administrative rules:
   (1) Factories and workshops.
   (2) Mercantile establishments.
   (3) Tenement houses where manufacture is carried on.
   (4) Bakeries and confectioneries.
   (5) Tunnels and caissons.
   (6) Mines and quarries.
   (7) Milling industry and malthouse elevators.

(8) Foundries.
(9) Buildings in course of construction.

3. Functions having to do with the collection and analysis of data on industrial problems and with research into methods of promoting safety, health, and comfort in industry.
4. Functions having to do with the formulation of an industrial code to supplement the statutes on safety, sanitation, and women's hours in canneries, and with granting variations from the code and even from certain of these statutes and from the one day rest in seven law in cases where exact compliance is impossible or impracticable.

It will be seen that the duties of the commission are not merely executive, but also notably in part legislative and judicial. In addition to supervising eight large bureaus having to do with the administration of distinct phases of the labor law, it is required to issue and amend rules, to grant variations, to determine the policies of the entire department, and to pass upon disputed workmen's compensation claims. The responsibility placed upon the shoulders of the five commissioners was not merely that of perfecting administrative machinery to carry out routine functions; it was a responsibility of immense potentiality for social and economic welfare. It called for a grasp of industrial problems that comes only through long experience in dealing with them, and for organizing and administrative ability of the highest order.

Situation within the Department

When the commission assumed its duties, it found matters within the labor department in a highly unsatisfactory condition. During the preceding four years labor legislation had been making more rapid progress than in any other equal period in the history of the state, and many of the bureaus and divisions were still struggling to adjust themselves to the changes. The mass of new legislation enacted as a result of the factory investigating commission's work, for instance, so modified the existing statutes with regard to building construction and fire prevention that, in the words of a responsible official of the department, "there was scarcely a factory left in the state that conformed with the law." The industrial board, created in 1913, in fulfilment of its duty to formulate an industrial code for carrying out numerous technical provisions of the factory law, had also established extensive rules and regulations. In consequence the incoming industrial commission found the bureau of

inspection straining under a load of pending cases in which evidence of violation of these new laws had been collected and an effort was being made to secure compliance. The legal bureau was swamped with cases for prosecution. The *Bulletin* of the industrial commission for October, 1915, contains the following statement on the effect of these changes in the law:

> A reflection of that change may be seen in the fact that while in 1912 the inspectors found it necessary to issue 42,000 orders that had to do with sanitary matters and 33,000 orders having to do with safety, in 1914 the inspectors found it necessary to issue 74,000 sanitary orders and 171,000 orders in relation to safety. Of this number, the records show that there were 100,000 having to do with the question of improved fire protection, largely required through the new provisions that were added to the law by the legislature of 1913.

Although the reorganization of 1913 had nearly doubled the statutory number of factory inspectors, many were not actually appointed until within a year of the time the commission took charge, and the staffs in the mercantile and home work inspection divisions were still much too small. The time which had elapsed was insufficient to train the inspectors in the technical details of the new laws or for them to adjust themselves to the difficult task of educating employer and employee alike to the higher standards. At the time the commission took hold, also, the factory inspection division was attempting to finish the first complete survey of all factory buildings in the state, to assist it in enforcing the new provisions. An up-to-date system of records and improved methods of following up violations had to be devised. Finally, due to political conflicts between the governor and the legislature, repeated changes in administrative heads had spread confusion and disorganization in this important branch of the service.

A division of industrial hygiene, intended to conduct investigations on industrial safety and sanitation and to make recommendations as a basis for the rules of the industrial board, was an added feature of the reorganization of 1913, for whose work there was but little American precedent. When the commission took charge this division had as yet failed to perfect its organization and methods of work in a way to accomplish the task set for it.

Another branch scarcely beyond the stage of organization when taken over by the commission was the workmen's compensation commission. This body had been in operation for only a year, had

originally had but three months to effect its organization, and even within its brief term of office amendments to the compensation law had made necessary important changes in its administrative machinery. One of the first things that had to be done under the industrial commission was to perfect methods for examining, filing, and passing upon all papers and documents concerning the compensation claims which were already coming in at the average of 140 a day. Every claim had to be analyzed, every agreement between employer or insurance carrier and employee had to be checked over to determine whether it was in the interests of justice, every disagreement as to facts had to be investigated and settled by public hearing. Only slight precedents were afforded by the other state compensation laws, no two of which were the same and none of which had been in operation for more than four years. Private insurance practice afforded practically no basis of experience on which the compensation commission might draw, either from an actuarial standpoint or from the standpoint of technique in handling business.

In accordance with the law there had been formed under the compensation commission the state insurance fund, which guaranteed to employers insurance against the cost of industrial accidents at a reasonable rate. The operation of such a fund called for all the special knowledge and experience required in any of the large private casualty insurance companies with which it must compete on practically equal terms. Although at the end of its first six months the fund had 7,119 policyholders, who were increasing at the rate of 300 a month, and its volume of business expressed in terms of annual premiums represented nearly $1,500,000, the commission found it still struggling with intricate actuarial and organization problems.

Still another new division under the department of labor, the bureau of employment, for the establishment and management of state public employment offices, had barely been established when the commission came into office. Although the law was approved in April, 1914, it was because of civil service delays not until November that the director was appointed, and by May, 1915, five branch offices had been opened. An expeditious and effective procedure for handling applications had to be devised, demanding the development in a short time of a complicated record system. In opening the offices the director had been seriously handicapped by delays in obtaining

civil service lists for the employees, and, because of the low salaries provided, competent persons were induced to take the positions only by assurances of the great possibilities of the work. Other obstacles to the smooth operation of the bureau were an unusual degree of unemployment, and deep-rooted prejudices against such bureaus on the part of both employers and employees which only a persistent campaign of education could overcome. Not until shortly before the bureau came under the commission did the demand for employees greatly increase and the various district offices have an opportunity to develop along normal lines.

The bureau of mediation and arbitration came under the supervision of the industrial commission at a time when strikes were increasingly numerous, due largely to conditions of industry affected by the war. In the metal trade alone 203,475 days were lost in 1914 as the result of industrial disputes.

The commission took over the function of inspection of boilers in factories, and inspection of the storage and handling of explosives, that had formerly been an important part of the work of the state fire marshal, and the correlation of this activity with the other inspectional work of the old department of labor required immediate attention.

Upon assuming office the members of the industrial commission naturally encountered many difficulties, not only in bringing about expected economies of administration and perfecting the administrative machinery of these various bureaus and their subdivisions, but in acquiring an understanding of the problem in its entirety and of the social and economic possibilities of good labor legislation ably administered. At the outset they had to become familiar with the complex provisions of the labor law; they had to learn the organization, functions, and methods of work of the department as a whole, as well as many administrative details; they had to meet difficult and pressing problems arising in connection with the administration of the workmen's compensation act and the state insurance fund; they had to learn the principles of rule making and of granting helpful variations from the safety laws. For the determination of the proper distribution of their time, individually and collectively, they had little precedent. The commission plan applied to labor law administration was still in an early stage, and so different in many respects was the problem before the New York commission from

that in Wisconsin or Ohio where the plan was already in operation that the experience of these states offered but little aid.

The physical separation of the various offices of the department in New York City made the problem of correlation and unifying the activities of the commission many times more difficult, and the importance of getting these offices under one roof very soon impressed itself upon the commission.

Moreover, the department and its employees had long been the object of severe criticism from various groups of the public. Upon the commission rested the obligation of finding the weak spots in the personnel and in the methods of work, and of instituting beneficial changes.

CHAPTER III

General Administration by the Commission

As previously stated, the New York State Industrial Commission went into office on June 1, 1915. Its members were:

John Mitchell, Mt. Vernon, Chairman. Former president, United Mine Workers of America; member, New York Workmen's Compensation Commission.

James M. Lynch, Syracuse. Former president, International Typographical Union; New York state commissioner of labor.

Edward P. Lyon, Brooklyn. Lawyer; president, Brooklyn Young Men's Christian Association.

Louis Wiard, Batavia. Former president, Associated Manufacturers and Merchants of New York State.

W. H. H. Rogers,[1] Rochester. Brick manufacturer.

The organization with which this body took up the task of carrying out the many duties entrusted to it consisted of seven principal bureaus[2] charged with enforcement of different portions of the labor law, and the following staff agencies for assisting in the general administration of the department: the secretary to the commission and his office force consisting of three assistant secretaries, a division of accounts, a cashier's division and the legal division;[3] the actuarial division[4] (included in the organization of the state fund but responsible directly to the commission); and the industrial council.[5] These various units make up a department with over 600 employees and an annual budget of about $1,225,000, centering in the five commissioners who act as a policy-determining and directing body.

[1] Henry D. Sayer, secretary of the commission, was appointed to succeed Commissioner Rogers on February 13, 1917. Previous to his connection with the commission Commissioner Sayer was chief clerk of the district attorney's office in New York City.

[2] See charts on pp. 263, 325, and 401. An eighth bureau, the bureau of industrial code, was created a month later; see p. 314.

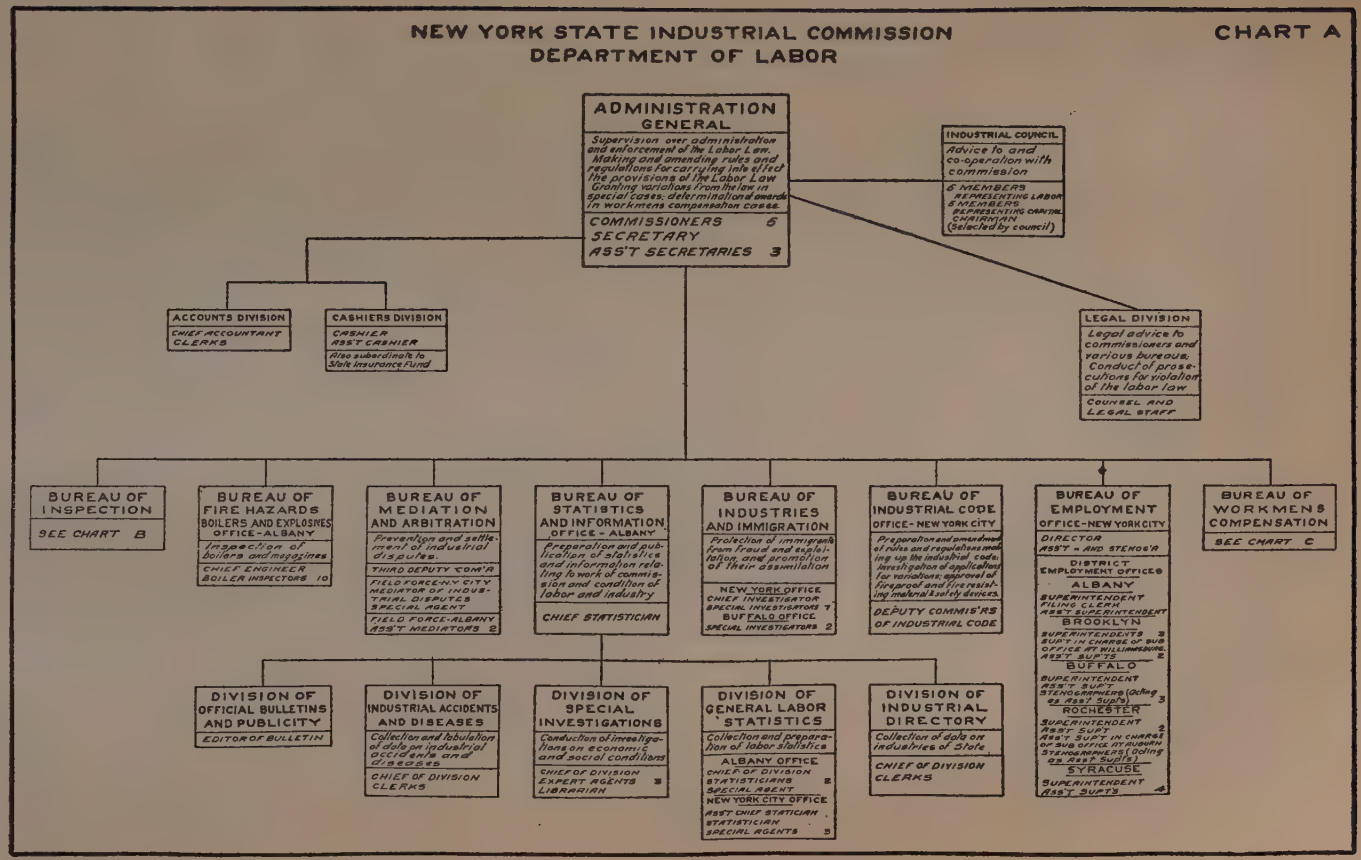
[3] See p. 484.

[4] See "State Fund," p. 421.

[5] See p. 302.

NEW YORK STATE INDUSTRIAL COMMISSION
DEPARTMENT OF LABOR

CHART A



The faithfulness and energy with which the commission has devoted itself to the task of managing this large department is worthy of the fullest commendation. This report covers only the first thirteen months of the commission's existence, a period in which, as recounted in the preceding chapter, it was confronted with many trying difficulties, in spite of which it has been able to accomplish a tremendous volume of work. The comment which follows, although critical regarding certain details of the commission's work, is made in full recognition of its able and aggressive efforts to administer a very complex body of labor law. It is offered, furthermore, for the purpose of securing further improvements in the law and its administrative procedure and in order to make the first year's experience of the New York Industrial Commission of the greatest value to other states about to adopt the industrial commission plan of administration.

Distribution of Commission's Time

During its first year the commission has been officially in session practically every business day, including several half-day sessions on Saturday. It convenes usually at 10 A. M. and sits until late afternoon, not infrequently until 6 or 7 P. M. Probably no officials in the state government have put in longer hours or sacrificed more of their own time and energy in an effort to dispose of the multitude of detailed matters which have come before them.

At the beginning the commission found it impossible to fix a definite schedule of time for various functions. For the first few months it was almost overwhelmed by the rapidly increasing flood of compensation cases, which had to be settled promptly. In order that they might familiarize themselves with the complexities of the compensation law and with one another's ideas in regard to its interpretation, the commissioners found it necessary for the entire body to sit three days a week on compensation claims alone. The other two full days were devoted to administrative matters, but even in these sessions much time was taken up by questions arising in the administration of the compensation law. Gradually fuller agreement on the meaning of the law, combined with better organization of the machinery for initial consideration of claims, made it possible to reduce the number of sessions on compensation cases to two a week, and to allow these to be conducted by not more than three, and usually two, commissioners. Two days a week—Tues-

days and Thursdays—are still regularly given to administrative matters. Out of 140 such sessions up to June 30, 1916, about 120 were held in New York City and the remainder in Albany. At all these meetings at least three commissioners, and at about half of them all commissioners, were present. Partly because so many had accumulated that it would have been impossible, appeals from orders issued by the division of factory inspection were at first not considered by the commission except as they developed into requests for variation.[6] Consideration of the proposed modifications of orders and minor variations from the law consumed a vast amount of the commission's time in administrative session, until on May 10, 1916, the commission set aside Wednesday morning as a regular period for hearing and acting on all appeals and petitions for variations, or for review of the validity or reasonableness of rules or orders, that the bureau of inspection had to bring before it.[7]

For individual commissioners the weekly calendar varies considerably, particularly in the case of two commissioners who are up-state a portion of each week, but it is usually similar to the following:

Monday:	Commissioners Mitchell, Lyon, and Rogers—Hear compensation cases in New York office.
	Commissioner Wiard—At Buffalo office; hears compensation cases and acts for the commission on other matters arising in the Buffalo district.
	Commissioner Lynch—At Syracuse or Albany office.
Tuesday:	Session of entire commission at New York office on administrative matters. Approximately half an hour is taken up each Tuesday with passing on variations submitted by the bureau of industrial code.
Wednesday:	Commissioners Mitchell, Lynch, Lyon, and Rogers—Half-day session on appeals for modification of orders of inspectors.
	Commissioner Wiard—At New York office; confers with representatives of bureaus under his supervision and attends part of the session of the commission.
Thursday:	Session of entire commission on administrative matters for entire day.
Friday:	Commissioners Mitchell, Lyon, and Rogers—Hear compensation cases, mostly involving requests for lump sum settlements.
	Commissioner Wiard—Attends session or is in office supervising work of the bureaus under him.
	Commissioner Lynch—Supervises work of bureau of inspection in either New York or Albany.

[6] See "Bureau of Industrial Code," p. 314.

[7] See "Variations," p. 273.

Saturday: Commissioners at New York offices, except Commissioners Wiard and Lynch, who spend Saturday morning hearing compensation cases and supervising the work of the branch offices in Buffalo and Syracuse respectively.

The activities of the five commissioners divide themselves into five principal groups: (1) administrative proceedings and supervision over bureaus; (2) adoption and amendment of codes; (3) making awards in compensation cases; (4) consideration of petitions for variations from the law or from rules of the commission; (5) consideration of petitions for review of rules or orders.

Administrative Proceedings and Supervision over Bureaus

The minutes of the commission's administrative sessions are kept in conformity with the law, "showing the vote of each member upon every question," and contain a full statement of all resolutions passed. Reports of discussion are not included, but the attitude of each commissioner can be learned from his vote. Most decisions are put in the form of resolutions, only such matters as calendars of compensation awards or merit rating reductions[8] being passed on simply by voting. Reading of the minutes is dispensed with. Calendars are not prepared for administrative sessions, and the practice has been to meet problems as they arose without the adoption of set rules of procedure.

When the commission took up its duties it found the department with six separate offices, blocks apart, in New York City, and with two separate offices in several other cities. To avoid the loss of time, annoyance, and lack of contact thus occasioned, the compensation bureau at Albany was moved into the department's quarters in the capitol, the two Buffalo offices were brought together, and as soon as leases could be adjusted the scattered New York City branches were consolidated in February, 1916, in one building at 230 Fifth Avenue. There the department occupies two whole floors and most of a third, with a total area of 38,557 square feet. The offices accommodate approximately 325 employees, and contain not only the headquarters and hearing rooms of the commission itself, but the main offices of the bureaus or divisions of factory inspection, mercantile inspection, home work inspection, workmen's compensation, state fund, employment, industrial code, industries and immigration, and legal division, as well as branch offices of the

[8] See "State Fund," p. 429.

bureaus of statistics and information and of mediation and arbitration. This consolidation has added greatly to the convenience of the public having dealings with the department, has made possible certain economies, such as a general store room, interoffice telephone connections, reduction of office rent, etc., and, most important, has created a stronger spirit of unity within the department.

Financial Control

The commission as a whole has acted on all important questions involving expenditure of funds, including the preparation of an annual budget for the department. Before the end of its first month it adopted a tentative budget and two months later a revised budget for the new fiscal period; it has also directed the handling of money in connection with self-insurance, and the purchase of securities and the payment of workmen's compensation awards by the state fund.[9] The law requires that all disbursements from the state fund shall be paid by the state treasurer "upon vouchers authorized by the commission and signed by any two members thereof," which the commission has interpreted as meaning that every such check must be signed by two commissioners. At the same time a schedule of these checks is made up in the cashier's office and sent to the state treasurer as authorization for the payment of the sums listed. About 1,000 of these checks are issued weekly, each of which requires the signatures of two commissioners, the secretary, and the cashier. This consumes a total of about twenty-four hours a week of these officials' time on work which could be done by a clerk, as is now being done in some departments of the federal government. This system accomplishes practically nothing that could not be accomplished by using a schedule of vouchers or checks which would be signed by the commissioners and transmitted to the state treasurer, leaving the signing of the individual checks to the cashier, who, if necessary, might be placed under a larger bond. This latter method is in fact already employed by the commission in regard to all salary and expense checks, although the law is identical with that in regard to the state fund.[10]

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[9] See "Bureau of Workmen's Compensation," p. 400.

[10] About April 1, 1917, the commission on its own initiative took steps to arrange with the state treasurer for relieving the commissioners, by means of schedules of vouchers, from the labor of signing checks.

Office Details

From the outset the commission has considered, along with important questions of policy, finance, or exercise of discretionary power, a number of minor details of office management, such as the purchase of a black-board, the renting of a typewriter, the granting of temporary leaves of absence, the consideration of requests for increase in salary, and various other questions affecting individual employees. Since the first six months there has been a commendable tendency to entrust more of these office details to the bureau heads concerned and to the secretary as office manager of the commission. Extension of this tendency would result in further saving of valuable time to the commissioners.

The question of lateness of employees has come before the commission on several occasions, and just at the close of the period covered by this study it authorized the purchase of time clocks for the New York and Albany offices.[11] It has not yet, however, adopted a rule covering sick leave or special leave, and the allowance of time off for illness varies from a week to six months or more. Annual vacation allowance in the department is four weeks.

Supervision over Bureaus

Action by the commission regarding matters of general policy in connection with the various bureaus is discussed under each bureau in the chapters which follow. It should be stated, here, however, that the amount of consideration given to such matters by the body as a whole is comparatively small. The bureau heads have, for instance, never all been called in together for a general conference with the commission, and while one or two have voluntarily submitted written programs for their work, these have never been required from all.

This situation arises in large measure from the law creating the commission, which states that at its first meeting and at least once a year thereafter

> the commission shall by resolution duly approved, apportion the administrative work involved in the performance of its duties and exercise of its powers under this chapter and under the workmen's compensation law, among the members of the commission and shall designate the portion of such work which each of its members, under the direction and control of the commission, shall supervise and be responsible for.

[11] These were put into use October 1, 1916.

This was interpreted to mean that each bureau or division should be put under the supervision of a single commissioner who would pass on all matters concerning that unit of the department and bring only those which he deemed necessary before the commission as a whole. At the first meeting of the commission supervision was apportioned as follows:

Chairman Mitchell: Bureau of workmen's compensation, including supervision over agreements and awards.
Commissioner Lynch: Bureau of fire hazards, boilers, and explosives, and bureau of inspection.
Commissioner Lyon: State fund, self-insurance, and legal division.
Commissioner Wiard: Bureaus of industrial code, mediation and arbitration, and statistics and information.
Commissioner Rogers: Bureaus of employment, and industries and immigration, and also supervision over investments for state fund.

A few days later it was further agreed that the branch offices of the department should be supervised in Syracuse and Utica by Commissioner Lynch, in Buffalo by Commissioner Wiard, and in Rochester by Commissioner Rogers. Changes in assignment, if any, were to be made on January 1 each year; so far no changes have been made.

The provision as to the assignment of each bureau to the exclusive supervision of one commissioner has not, under the practice of the commission, produced the results intended by the law. It has had the effect of setting up over each bureau a super-head to whom the regular bureau head is obliged to take any problem on which he may wish the advice or support of the commission. Also it has caused the bureau head to think he must bring petty details, for which he himself should be responsible, to his commissioner. In some cases in particular matters bureau heads have been unable to get from the one commissioner who supervises them the consideration they think their work and peculiar problems deserve, but have felt that it might be regarded as discourteous if they brought these matters to the commission as a whole. This feeling on the part of bureau heads is of course unwarranted, as the commission desires all bureau heads to feel that they are directly responsible to the commission as a whole, quite independently of the supervision of individual commissioners. Certain matters have been taken to the secretary and by him to the commission, but there

has been no general rule providing for such procedure. The result has been, with two or three exceptions, a comparatively small degree of contact between bureau heads and the entire commission. The chairman, for example, is so burdened with the details of administering the compensation law that he has not yet had time to familiarize himself with the operation of other bureaus as he would desire. Another disadvantage of so splitting up the work is that whenever a new commissioner is appointed there is likely to be a period of uncertainty and disturbance for the bureau or bureaus which are to pass under his direction.

Cooperation within the Department and with Outside Agencies

The question of cooperation between bureaus has at various times come before the commission. Consolidation of the former department of labor and the workmen's compensation commission has enabled the bureau of statistics and information to take up for the compensation bureau the huge burden of compiling statistics of accidents and awards. A conference has been arranged between the head of the inspection bureau and the safety engineer of the state fund to devise a method by which duplications of inspections and orders might be avoided.[12] Instructions have also been issued that applications from bureaus or divisions for legal advice or assistance shall be made to the commissioner supervising the legal division or to the secretary, and referred by either of these officers to the legal division. Two auditing divisions have been consolidated into one, directly under the secretary. But, as shown in the chapters of this report dealing with the various bureaus, they are still failing in important ways to cooperate, and the commission has given little attention to plans, such as regular interbureau conferences, for developing this cooperation.

On various requests from outside agencies for cooperation the commission has taken favorable action. Agreement was reached to collect and transmit each month to the United States Bureau of Mines certain data relative to employment conditions in mines within the state. Arrangement was also made to furnish information to the federal Children's Bureau relative to child employment. Between the New York City Fire Department and the commission there has been continual cooperation in administering the laws re-

[12] See "Division of Factory Inspection," p. 326.

lating to structural conditions of factories in the city, and the commission has on several occasions consented to give the fire department access to its records of inspections. It has delegated representatives of the department to eight or more national congresses or conventions held during the year.

Consideration of Labor Law

During the session of the 1916 legislature the commission gave considerable time to discussion of amendments to the labor law, including the workmen's compensation act. It drafted and recommended to the joint legislative committee on labor and industries a number of bills designed to improve these laws from an administrative standpoint. Among these was an amendment extending the application of the workmen's compensation law, which was passed in modified form. It tentatively approved the compromise "Argetsinger bill" amending the labor law generally, which was vetoed by the governor.

Adoption and Amendment of Codes

One of the most important functions devolving upon the industrial commission is that of preparing, adopting, and amending rules and regulations constituting the industrial code to apply specifically and to supplement the general provisions of the labor law. Development of codes was the chief purpose of the creation, in 1913, of the industrial board.[13] The principle of code making established then, and continued under the commission, was that the detailed technical rules and regulations applying the law to particular conditions or industries should be worked out by committees composed of employers, employees, and experts specially familiar with the problems involved, and should be adopted by the commission only after public hearing.

At the time the industrial board went out of office it had appointed nine advisory committees to consider the subjects of fire hazards, ventilation and lighting, sanitation and comfort, dangerous machinery, dangerous trades and processes, conditions in bakeries, confectioneries, foundries, and the milling industry. A small fund for paying the expenses of members of these advisory committees was exhausted within three months. Two hundred and thirty-four rules

[13] See "Development of Agencies for Administering Labor Legislation in New York State," p. 250.

were formulated by the committees, adopted by the board, and published in twelve bulletins.[14]

Action of the commission on code matters and the work of the bureau of industrial code, created by it to carry on the detailed work of preparing codes, are discussed in the chapter on that bureau.[15]

Compensation Cases

The commission itself is required by law to make or approve workmen's compensation awards, to determine the financial responsibility of applicants for self-insurance, and to authorize refunds and merit reductions,[16] invest the funds and otherwise assume responsibility for the transactions of the state insurance fund. Applications for self-insurance are not approved until the responsibility of the applicant has been investigated by one of the assistant secretaries and tentatively approved by the commissioner assigned to supervise self-insurance. Although large numbers of awards are made by deputies and formally approved by the commission on schedule lists, without review, the hearing of compensation cases has from the start taken more of the time of the commission than all other work put together. Inasmuch as the former compensation commission had given its entire time to hearing compensation cases, an adjustment of the machinery for initial consideration of claims was necessary to relieve the new commission from following the same procedure. Such an adjustment reduced the number of cases going to the commission within a few months to about forty a week but at the end of the period studied, due to the increased number of accidents resulting from the sudden expansion of industry, the number had grown again to approximately sixty a week and the commission's problem of where to draw the line on sacrificing its time to compensation work had become very serious.

In the chapter of this report on the "Bureau of Workmen's Compensation"[17] the types of compensation cases now referred to the commission are analyzed and suggestions are worked out in co-

[14] These bulletins covered fire-proof and fire-resisting material, construction, guarding and maintenance of elevators and hoistways in factories, sanitation in factories and mercantile establishments, conditions in foundries, in the milling industry and malthouse elevators, and the removal of dusts, gases and fumes.

[15] See p. 314.

[16] See "State Fund," p. 429.

[17] See p. 400.

operation with the commission which may to some extent help in meeting this problem.

Variations[18]

The duties bordering on the legislative, which the commission exercises in granting variations from the labor law, are among the most weighty with which it has been entrusted. Prior to the enactment of the industrial commission law the labor department had been granting variations from the law under particular authorizations[19] which gave the former industrial board authority to dispense with or modify certain mandatory provisions relating to factory buildings, wherever such provisions could be dispensed with or modified without endangering the safety of employees. In addition to this variation of the mandatory requirements the department had developed a practice of reconsidering its orders on complaint of persons affected.

The 1913-1914 amendments to the labor law included many technical requirements with respect to factory construction and equipment, the enforcement of which gave rise to numerous complaints and protests. A subdivision of appeals to handle the protests in the city of New York alone was established in the bureau of inspection,[20] on October 1, 1914, and, when the industrial commission was organized in 1915, was continued to October 1, 1915. In this period of one year the subdivision considered 2,793 protests.[21] Not all of these protests, however, were settled or decided by the subdivision; the more difficult ones were sent to the industrial

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[18] It will be noticed that this section of the report, and the one following on petitions for review, cover a period extending beyond June 30, 1916—the date on which the general report was to have been closed. Many of the matters given as illustrations have arisen subsequent to that date. Notes as of February 1, 1917, are added to show the more important changes that have occurred in the commission's procedure between the writing of the report and its publication.

[19] Like that in Section 79-b.

[20] See "Bureau of Inspection," p. 339.

[21] Inasmuch as these protests were handled by the subdivision of appeals they came to be spoken of as appeals. In Sections 52-a and 52-b a distinction is drawn between petitions and appeals. The term "appeal" is reserved for the action taken when a person appeals from the commission to the courts, while the term "petition" corresponds to what are here called appeals though they are really protests to the department.

board. Except in those cases where the complainant denied that any order at all should have been issued against him his protest was in effect a counterproposal of what he would be willing to do in order to comply with the law. His proposal might undertake to comply with the law in a manner different from that set out in the original order, in which case he merely asked for a change in the department's interpretation of the law; or it might seek to substitute for the law's mandatory requirements set forth in the order something which would produce a result substantially equivalent to that aimed at by the law, in which case he asked for a variation of the law itself. There was no specific recognition in the law of the right to make such complaints or of the department's duty to hear them; they represented merely a detail of administration which had grown up in the department. These complaints were all handled in the same way. It was not the practice to make any distinction between counterproposals involving merely a substitute or changed order, and those involving a variation of the law.

Law Relating to Variations

The industrial commission law made such a distinction necessary because substitute or changed orders may be and generally are disposed of by the bureau of inspection, while variations of the law (or of the rules and regulations) must under the law come before the commission itself. The variation law provides[22] that if there shall be practical difficulties or unnecessary hardship in carrying out any provision of the labor law, or rule or regulation,[23] affecting the construction or alteration of buildings, exits therefrom, installation of fixtures and apparatus, or the safeguarding of machinery and prevention of accidents, the commission may grant a variation from such provision. It is important to notice that such variations are permissible only with respect to (1) the physical requirements of buildings and (2) devices for preventing accidents. Moreover, the variations must be such as observe the spirit of the provision or rule or regulation and secure public safety. Variations are granted on petition, after public hearing. At least three affirmative votes of the

[22] Section 52-a of the labor law, enacted in 1915.

[23] Attention is called to the fact that orders are not mentioned in this section relating to "Variations" but are dealt with in the section on "Petitions for Review," p. 282, and that from now on the distinction between a substitute or changed order and a variation of the law must be observed.

commissioners are necessary. A record of all variations must be kept, properly indexed under section numbers of the law to show the provisions affected by the variations. The law declares that a variation "shall apply to all buildings, installations or conditions where the facts are substantially the same as those stated in the petition" on which the variation is granted.

The section opens the way for securing safety without compelling compliance with requirements which are unreasonable and impracticable in particular circumstances. Its purpose is not to establish general exceptions to the law but to vary the letter of the law under particular circumstances to avoid unnecessary hardships while preserving the beneficial purpose of the law. The power here delegated to the commission to grant variations is a similar power with respect to buildings and safety devices in general to that which was delegated to the industrial board by such sections as 79-b with respect to stairway enclosures.

The commission has not passed any resolution respecting the handling of petitions for variations under the provisions of this law.[24] On the contrary, the confusion of petitions for variations of law with petitions for changes in orders has been permitted to continue as formerly.[25] There has grown up in the commission a sort of classification of variations which only increases the confusion. An attempt is made to divide variations into "major" and "minor," while a "modification"[26] is described as something different from a minor variation. This classification is not based on any difference in form or purpose between the petitions for variations and petitions for relief from the terms of orders, but does roughly indicate the procedure on such petitions. The bureau of inspection handles

[24] A resolution relating to "appeals on orders" was passed May 8, 1916: *"Resolved,* that all appeals from orders issued by the bureau of inspection shall be referred first to the inspection department for adjustment. If impossible to make an adjustment, the matter shall then be referred by the inspection department to the commission for hearing, or to the bureau of industrial code for variation as may be necessary." A method of procedure in furtherance of this resolution was outlined in a letter dated May 10, 1916, from the chief factory inspector to the supervising inspectors, Districts No. 1-5.

[25] See, however, footnote 45, on p. 288.

[26] The idea that a modification may be something different from a variation is evidently based on such provisions as, for example, Section 79b-2 where it is said that under given conditions certain requirements may be dispensed with or modified.

all petitions with respect to orders, together with petitions for "minor variations and modifications." The bureau of industrial code handles all petitions for "major" variations.[27]

Variation Cases Handled by the Bureau of Inspection

When a petition, verified or unverified, reaches the bureau of inspection alleging that an order is unreasonable or that compliance therewith will work unnecessary hardship on the petitioner, it is referred to the supervising inspector of the proper district.[28] These petitions, like the ones which were formerly submitted to the subdivision of appeals, usually contain a counterproposal of what the petitioner is willing to do to comply with the law. The supervising inspector sends an inspector to make a re-examination of the premises affected. The inspector makes his report and recommendations to the supervising inspector. So far the procedure is practically the same as that which was followed by the subdivision of appeals. The supervising inspector next sends this report, with his own recommendations, to the first deputy commissioner. The deputy commissioner writes to the petitioner, setting forth the substance of the petition, stating the conditions found by the inspector, and rendering a decision as to whether the original order is confirmed or whether the department will accept as satisfactory something different from that set out in the original order.

Up to this point there is no distinction between verified and unverified petitions.[29] But from here a distinction does prevail, chiefly

[27] The attempted line of distinction is by no means clear, and certainly far from satisfactory. It seems to be taken for granted that where a complaint against an order involves also a "slight" variation or a modification in the law or rules and regulations, this will be handled by the bureau of inspection. Where a petition is filed asking in terms for a variation, or if it involves a variation which is not "slight," it is generally referred to the bureau of industrial code. Again, it is said that a variation with respect to a proposed building is handled by the bureau of industrial code while a variation with respect to an existing building is handled by the bureau of inspection—and this is true in spite of the fact that the two variations may involve practically the same question.

[28] It is really incorrect to call these communications "petitions." They are informal complaints and ask for whatever relief the commission can grant. The great majority of the complainants probably have no idea of the two ways of approaching the commission, namely, to ask for relief in the form of a variation or to ask for relief in the form of a changed order.

[29] Strictly speaking the matter of verification is out of place in a discussion

with respect to a public hearing. In the case of verified petitions the deputy commissioner notifies the petitioner that the matter will come before the commission on a specified date (generally the following Wednesday) and that at that time the petitioner may appear and be heard. In the case of unverified petitions no reference to a public hearing is made and the petitioner is not given to understand that he may be heard.[30]

After decision by the deputy commissioner the case is referred to the commission. This is done by means of a "calendar for public hearings." This calendar is prepared in the bureau of inspection and contains a sort of docket of all "minor variations and modifications" which have come to the attention of the first deputy commissioner. As developed by the practice of four or five months prior to October, 1916, the calendar is usually in two sections: First, "personal appearances" (which are for the greater part cases based on verified petitions);[31] and second, the "regular calendar" (which does not include any cases based on verified petitions).[32] All matters on this calendar are handled in the same manner in the bureau of inspection and reach the commission through the same channels. The cases are numbered and are entered according to the location of the premises affected. Each entry contains the address of the premises, the name of the owner or occupant, and a summary of the orders appealed from. It also states the condition of the premises as found on inspection, and frequently recites what the petitioner proposes to do to comply with the law. It then sets forth the decision rendered by the first deputy commissioner, and, in the personal appearance cases, recites the fact that the petitioner has been notified to appear. All the correspondence, reports, and

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of variations, because verification is required by law only in the case of petitions for reviews of orders, etc. It does become important there, however, because of the confusion of review cases with "minor variation and modification" cases.

[30] Inasmuch as these petitions or complaints involve the granting of a variation from the law it would seem that the strict letter of Section 52-a relative to notice and hearing is not being complied with. The fact that the variation is a "minor" one does not change the situation. Note, February 1, 1917: Notice of hearing is now given in all cases.

[31] It is not necessary to verify the petition in order to obtain a hearing. If a request for a hearing is made it is generally granted.

[32] Note, February 1, 1917: The form of the calendar was changed about January 1. It is no longer divided into sections as above.

records relating to each case are collected and submitted with the calendar. The matters so submitted consist generally of the original petition, the report and recommendations of the inspector, the action of the supervising inspector thereon, and a copy of the letter sent out by the first deputy commissioner. In connection with these there is also submitted a more or less detailed plan of the premises and any other available matter that may be relevant to the case. Thus when the calendar is completed there accompanies it a complete record of each case.

Hearings on Minor Variation Cases

Wednesday morning of each week is set aside by the commission for hearing the personal appearance cases and for passing on the other matters included in the calendar. One commissioner has charge of the calendar. The first deputy commissioner handles the record and acts in the capacity of prosecutor for the commission; that is to say, he furnishes the commission with evidence as to what the condition of the premises is and presents the case from the point of view of what the bureau of inspection thinks ought to be done. If, when a case is called, the petitioner does not answer, the decision of the first deputy commissioner is affirmed. For this action by the commission the summary of the case as given in the calendar is generally considered sufficient. If the petitioner or some one in his behalf answers he is permitted to present his objections to the order. No formal rule is in force as to how the presentation of his case shall be made. He is encouraged to tell anything which bears upon the unreasonableness of the order complained of. Usually the commissioners question both him and the first deputy commissioner with respect to the matters presented. After the petitioner and the deputy commissioner have been heard the commission passes upon the case by resolution. The commission is not bound by the decision of the first deputy commissioner but that decision is usually affirmed. The resolution may be to the effect that the original order is affirmed, or that the department "will accept" certain things as satisfactory, or that the order will be "waived" or "held in abeyance" while stated conditions exist or an extension of time granted. A stenographic record is kept of all the testimony offered by the petitioner and of matters submitted by the deputy commissioner, but no transcript of the stenographic notes is made unless on special request or unless it becomes necessary to furnish

a record of the case. A separate motion is made for each personal appearance case. The minutes of the commission identify the case and orders issued and show the vote of each commissioner on the motion to dispose of the case.

After the personal appearance cases are concluded the "regular calendar," which contains all cases in which no hearing is to be had, is disposed of. Since no contest is offered on these cases the usual course is for the commission to affirm the first deputy commissioner's decision. This is done in a "blanket resolution" stating that the action of the deputy commissioner in all cases recited by certain numbers is approved.[33]

Probable Extent to Which Variations Are Granted through the Inspection Bureau

The calendars for a period of approximately two months prior to July 1, 1916, show that the commission disposed of about 350 cases in this way, of which thirty-one were "personal appearances." The calendar is entitled "minor variations and modifications" but it is not accurate to say that it contains nothing but variations and modifications.[34] In some instances the entry is to the effect that a particular order complained of has been affirmed—which, of course, is a denial of a variation. Any matter with which the first deputy commissioner has to deal and on which he desires a vote of the commission may be and is included. The calendar is a convenient way of putting these matters before the commission. As will appear later in the discussion of petitions for review, the calendar contains variation cases as well as review cases and there is no way, as far as the calendar itself is concerned, to distinguish one from the other. Accordingly the figures given above cannot be taken as showing the number of variations granted but only the number of cases decided. It is probably true that in a majority of the cases relief of some kind was granted to the petitioner, but no

[33] Note, February 1, 1917: With the form of the calendar changed and notice of hearing given in every case, the "blanket resolution" practice has been discontinued. Every case now is disposed of in the same way as "personal appearance" cases were formerly. "Minor variations"—*i.e.*, slight changes in the provisions of existing laws—granted in the procedure above described are not published.

[34] Note, February 1, 1917: The title "minor variations and modifications" has been omitted and reference is now made only to "the calendar."

definite decision is made in each case by the commission as to the nature of the relief granted—whether it is a variation from the law or only a change in an order.

Variation Cases Handled by the Bureau of Industrial Code

As has been said heretofore there is no satisfactory line of division between the variation cases handled by the bureau of inspection and those handled by the bureau of industrial code. Nor is there any satisfactory manner of deciding to which bureau a petition for a variation shall be referred. Apparently, unless the petitions are addressed to the bureau of industrial code or to the commissioner or one of the deputy commissioners in charge of that bureau, they are received by the bureau of inspection; and it then rests largely with the bureau of inspection to determine which of them shall be referred to the bureau of industrial code.

When a petition (often even here there is no formal petition but only a letter containing some complaint) reaches the bureau of industrial code this bureau generally obtains, from the bureau of inspection, inspection records of the premises affected. If the records so obtained do not give sufficient information for the bureau of industrial code to act on, a request is made to the bureau of inspection to have a reinspection made. Thereafter the procedure in the bureau of inspection is the same as that for a petition handled by the bureau of inspection, except that the report on reinspection is submitted to the bureau of industrial code instead of to the first deputy commissioner. In the meantime the bureau of industrial code notifies the petitioner that he will be granted a hearing on a specified day. These hearings are held before the bureau and, like those before the commission on petitions for minor variations, are conducted without any particular formality. A complete record of each case is kept, showing the course of the hearing and the action of the bureau. A decision to grant or to deny the variation is made by the bureau at the hearing and the petitioner is informed as to its nature. The petitioner is further informed that the decision is subject to approval by the commission. In each case the decision, together with the grounds on which it is based, is stated as a recommendation embodied in the form of a resolution and submitted to the commission.

The situation then is practically the same as when minor variations are being considered, the main distinction being that a reso-

lution submitted by the bureau of industrial code presents an individual case to the commission in a more formal manner than is done by the inspection bureau's "calendar." In either case the commission's action is expressed in the form of a resolution. The commission is not bound by the decision of the bureau of industrial code. Accordingly the resolution containing the decision rendered by the bureau may be approved, rejected or modified. It is, however, usually approved. Variations granted in this manner are published in the monthly bulletin and a copy of each variation is given to the bureau of inspection.

It is important to note the apparent effect of Section 52-a which provides that a variation "shall apply to all buildings, installations or conditions where the facts are substantially the same as those stated in the petition" on which the variation is granted. This seems to put variations on practically the same footing with rules and regulations. In this respect a variation would become a part of the law and be subject to enforcement by the bureau of inspection the same as any other part of the law. If such an interpretation of Section 52-a were accepted and put in practice the inspection bureau would have to determine whether the facts in a particular case were covered by a variation previously granted. The practice is, however, to require in each case a separate petition from the person in interest or at least a separate recommendation from the inspection bureau.

A matter before the commission on October 11, 1916, will illustrate this. A petition was under consideration asking permission to install a certain type of trough water closet. Under Section 88-a "the use of any form of trough water closet" in factories is prohibited. There was some discussion by the commissioners as to whether the particular type proposed was a trough closet within the meaning of the law. No decision was made on that point but it was informally agreed to consider granting a variation from that provision of Section 88-a and thus give the permission asked for. Accordingly the counsel and first deputy commissioner were instructed to cooperate with the industrial code bureau in preparing the text of a variation for submission to the commission.[35] The first deputy

[35] Note, June 1, 1917: No variation was granted, but the legislature enacted an amendment (Laws 1917, C. 693) to this section. Pending the action of the legislature, orders covering the matter were issued and extension of time for compliance was granted.

commissioner announced to the commission that he had on hand something like seventy or eighty requests for permission to retain present installations of such closets, and asked if the granting of the variation would cover all those cases. The answer of the commission was that it would not, but that each of those requests would have to be taken as a petition for a variation.

Extent to Which Variations Are Granted through the Bureau of Industrial Code

The extent to which variations have been granted through the bureau of industrial code during practically the entire history of that bureau, from the date of its creation to June 30, 1916—a period of about one year—is shown by the following table:

Section of law involved[86]	*Petitions*	*Variations* *Granted*	*Denied*	*Pending*
52-a. Unnecessary hardship and practical difficulties	200 (and over)	150	46	(no figures)
79-b-1. Fire escapes as second means of exit	312	160 81 (conditionally)	65	6 (in abeyance)
79-b-2. Enclosed stairways	153	43 52 (conditionally)	53	5 (in abeyance)
79-e-2. Increased occupancy (statistics not available)		10 (approximately)		
Total	665	496	164	11

Petitions for Review

Section 52-a provides for a review by the commission of the validity or reasonableness of any rule or regulation or order made by it, on petition of any person in interest. A petition is required to

[86] There seems to be some confusion as to where the commission derives authority to grant variations—whether from the general provision in Section 52-a or from the particular provision in the section involved. As far as variations which have to do with physical requirements of buildings are concerned it would seem clear that Section 52-a confers the authority. In such cases the variation is granted "under" Section 52-a but it is "from" the requirements of some other section. It would be helpful if Section 52-a could be so amended as to cover the whole field of variations which the commission is authorized to grant and thereby made to constitute the exclusive power to grant variations.

be verified and to state the rule, regulation, or order whose validity or reasonableness is questioned, and the respects in which it is claimed to be invalid. The petitioner is deemed to have waived all objections to any irregularities or illegalities other than those set forth in the petition. If the issues raised in the petition have not already been adequately considered by the commission a public hearing must be held and notice thereof given to petitioner. Upon such hearing if the commission finds that the rule, regulation or order complained of is invalid or unreasonable it shall revoke it or substitute therefor a new or amended one. The decision of the commission is final unless within thirty days an appeal is taken to the courts as provided in Section 52-b.

The provisions here outlined for a limited review, as well as those later referred to in relation to court review, simply impose reasonable restrictions upon the opportunity for raising questions of legality and discourage the raising of such objections. Perhaps no form of legislation is more frequently subjected to attacks upon its constitutionality than are laws relating to labor. Unfortunately, in the past it has not infrequently happened that an adverse decision by an inferior court, or even a police magistrate or justice of the peace, has created a precedent from which, under our judicial system, no appeal has been possible and yet which served to nullify the enforcement of the law as effectively as if it had been a well considered judgment of the court of appeals. It is this sort of thing that this procedure was intended to put an end to. Not only do these provisions give the persons affected an opportunity to make proper objections but it also gives the commission, before they are subjected to test in the courts, an opportunity to reconsider its own rules, regulations, and orders from the point of view of their actual application in concrete cases. It is an essential principle in the commission law that if they are to be objected to at all the objections must be presented to the commission first. The validity of the law, and of rules, regulations, and orders frequently depends upon facts and conditions difficult to bring out accurately and thoroughly in an appellate court. At least in the case of rules, regulations, and orders the proceedings before the commission will develop far better than could be done in any court the facts which are alleged to justify or to invalidate the provisions in question, and will make such facts available for the use of the court if an appeal is taken from a final determination of the commission.

The great majority of questions arising over orders are settled in the bureau of inspection without being referred to the commission.[37] The main part of the commission's discretion with respect to enforcement is vested in that bureau; the determination is really made there how the law is to be complied with and whether it is actually obeyed. Such matters may be divided into two classes: First, where the deputy commissioner decides that the law is being or can be complied with by the petitioner though in a manner different from what the order may have intended or specified. This involves only a change in the order. The second class of cases is where the order complained of is affirmed and the request of the petitioner for permission to do something different or not to comply at all is denied. In such cases the decision of the inspection bureau is not necessarily final for the petitioner may still file a verified petition and secure a hearing before the commission. In practice, however, the decision of the inspection bureau is usually accepted by the petitioner. Thus, if the consideration of cases arising over orders were limited to a review to determine whether the order ought to stand as issued or whether it could be changed, there would not be many cases of this character referred to the commission by the bureau of inspection. And, as has been said, the great majority of them are settled in that bureau.

There is, however, a considerable number of cases arising as objections to orders where it is evident that some sort of relief ought to be granted to the petitioner, but where it is not clear whether the relief involves merely a change in the order or a variation from the law.[38] These cases are generally settled as variations.[39] That is to say, while the theory of the law contemplates two separate proceedings for reviewing the validity or reasonableness of an order and for granting a variation, the commission does not always observe that distinction but rather combines the two proceedings in

[37] The bureau of inspection states that during the four months ending June 30, 1916, 1,417 cases were disposed of in this manner.

[38] No case has been found where a petition has been filed to review the validity or reasonableness of a rule or regulation: it is always an order whose validity or reasonableness is disputed. All reference to rules and regulations will be omitted for the present and the review procedure will be discussed in its relation to orders.

[39] One of the commissioners says that while no figures are available, probably 98 per cent of such cases are finally settled as variations.

one.[40] In a few cases, however, the commission has kept the two proceedings separate, affirming the order from which relief was sought in the petition for review and advising the petitioner to petition for a variation. The cases in which the orders are affirmed and the affirmance approved by the commission constitute a different class and do not furnish any ground for such a combination of proceedings. For in these, no relief being justified on the evidence presented to the commission, compliance with the order is necessary unless the petitioner appeals to the courts.

Same Procedure for Review and for Minor Variations

As far as procedure is concerned a petition for review of an order is handled in exactly the same manner as a petition for a minor variation. In fact, both classes of cases are entered together on the calendar of minor variations and modifications. They are not kept separate, and on reading the calendar it is difficult to ascertain just what is the nature of the case to be considered, whether a review or a variation.

The calendar for October 25, 1916, illustrates the way different kinds of cases are entered together. Three cases under "personal appearances" were submitted, besides a large number of cases on the "regular calendar." Brief statements of the three first named cases follow:

1. A petition by a sugar refining company in Yonkers for a review of the validity and reasonableness of an order relating, among other things, to an enclosed stairway. This petition was verified and in strict compliance with the specific requirements of Section 52-a. As was stated by the counsel at the first hearing of this petition (October 4) the purpose was to secure a determination from the commission that the order complained of was unreasonable and invalid, and thus to escape the necessity of complying with it. The contention that counsel urged was that the building in question did comply with

[40] The purpose of the two proceedings (as shown by the two sections numbered 52-a) is much the same; namely, to allow the petitioner to show that it is unreasonable for him to be compelled to do a particular thing. To the extent that an order—as based on the statute—is shown to be unreasonable in a particular case it shows also that, unless the statute can be complied with in some way different from that set out in the order, the statute is unreasonable in that same case. In other words, showing that an order is unreasonable may also establish the grounds on which a variation should be granted. When that is the situation it is both proper and practical that the commission should have power to grant the variation without compelling the petitioner to start new proceedings.

the law and that it was unnecessary for the owners to do any further work on it or at least unnecessary to do all that the order required. The original hearing was adjourned from October 4 to October 25 so that an attempt could be made to reach an agreement as to what should be done in order to put the building in such shape that the commission could accept it as safe. An agreement was reached between the inspection bureau and the sugar company which provided for the acceptance of less than the original order had required. The action of the inspection bureau was affirmed by the commission. No definite statement was made in rendering the decision as to whether relief was granted on account of the unreasonableness of the order, or whether, assuming that the original order was warranted in law, relief was granted as a variation. In other words, it was a case of relief being granted and no decision rendered as to what kind of relief it was.

2. A petition by a Buffalo concern for a variation. This was also a case in which an order relating among other things to enclosed stairways had been issued, and the variation was requested so that the requirements of law as recited in the order would not have to be complied with. According to the entry on the calendar "this is an appeal (filed under Section 52-a) from the decision of the commission" requiring certain things to be done. From this entry it would seem that a review was asked for under the second Section 52-a, and that the relief expected was a decision to the effect that the order was unreasonable and invalid. The correspondence in the case shows, however, that the communication from the petitioners asked in express terms for a variation. The petition was not verified. Notice was given to the petitioners that the case would be heard on October 25. They asked for a short postponement and it was granted.

3. An appeal by a firm in Cooperstown from a decision of the first deputy commissioner requiring compliance with certain orders for self-closing fireproof doors, etc. The impression is created by this entry that the petition is filed for a review of the validity and reasonableness of an order, and that relief would be granted on such review. There was no formal petition and no verification; only a letter of complaint, demanding that the complainant be heard. Notice was given that the case would come before the commission on October 25. The complainant could not appear and the order was affirmed, subject to a later hearing if he so requested.[41]

To summarize the three cases, one arose on a specific petition for review, one arose on an express request for a variation, and the other arose on an informal complaint. In the first case the requirements of the second Section 52-a were complied with, in the second a substantial compliance was made with the requirements of the first Section 52-a, and in the third there was compliance with neither of the two sections. Each case was entered on the calendar in the same manner. The entries did not show the exact way in

[41] This case was subsequently reopened and a hearing granted.

which any of the cases arose or the exact proposition to be decided. The one thing in common was that some sort of relief was asked for, and the only question put to the commission by means of the calendar was whether the relief ought to be granted. No case raised the pointed question whether the relief would involve a variation.

The manner in which the commission handles the "calendar of minor variations and modifications" has been described as a part of the procedure for granting variations, so that it is unnecessary to repeat it here. The same description holds good for disposing of petitions for review, for as has been stated the petitions are entered on that calendar. One or two further points should be noted about the calendar, particularly in the matter of verification and "personal appearances." A distinction is made on the calendar between verified and unverified petitions.[42] Verification, however, does not represent a distinction between petitions for review and petitions for variations; that is, it does not furnish a means of identifying the two kinds of petitions, but it has come to have a particular significance only in the matter of requiring a public hearing.[43] Accordingly when a petition is verified notice of a hearing is always given and the case is entered on the calendar as a "personal appearance." But "personal appearance" does not necessarily mean that the case is brought on a verified petition. "Personal appearance" includes more than verified petitions. This is illustrated by the

[42] Note, February 1, 1917: With the change in the calendar as heretofore noted this distinction has been eliminated, though the calendar still specifies the fact that a petition is verified.

[43] The real significance of verification has possibly been overlooked. In Section 52-b it is provided that an action may be brought in the supreme court to review the validity or reasonableness of the law, rules, and regulations, and orders; but that no such action with respect to rules and regulations and orders shall be brought except as an appeal from the action of the commission under Section 52-a. Again, under Section 52-c it is provided that prosecutions for violations shall be stayed pending the disposition of proceedings brought under Section 52-a or Section 52-b. It can hardly be said that a determination has been made by the commission under Section 52-a, or that proceedings are pending under Section 52-a, unless, in either case, the requirements of that section have been complied with. Section 52-a specifically requires that petitions shall be verified. It would seem then that a determination by the commission on an unverified petition could not be used as the basis of an appeal to the courts under Section 52-b, nor could the proceedings on an unverified petition act as a stay of prosecution under Section 52-c.

description above of the three cases on the calendar for October 25, only one of which was on a verified petition. A request for a hearing is generally enough to have the case entered as a personal appearance.

Commission Fails to Distinguish between Review Cases and Variation Cases

In disposing of petitions for review of orders and petitions for minor variations no definite attempt is made to distinguish between the two classes of cases, and probably few specific decisions are rendered as to whether the relief granted in such cases is or is not a variation. The cases are handled without the separate proceedings contemplated in the industrial commission law, and the process of granting variations is confused with the process of reviewing orders. In some instances, to which attention has already been called,[44] a combination of the proceedings seems justified.

As the situation stands at present most of the cases which arise as petitions on orders and which are referred to the commission are, where any relief at all is granted, settled as variations. Except in a few instances there has been no vigorous effort on the part of the petitioner to secure a determination of the reasonableness of an order, and the general attitude of the commission has been not to make such a determination but to grant the relief in the form of a variation.

It may be said also that the inspection bureau submits to the commission as variations matters which do not involve a variation. When a petition on an order is received and the inspection bureau decides that the petitioner is entitled to some relief there is perhaps in many cases no actual ascertainment whether the form of that relief involves merely a change in the order or whether it involves a variation in the law. Both classes of cases are entered together on the calendar of minor variations and modifications. This calendar thus contains cases in which a variation from the law may be necessary, as well as cases where the desired relief might involve only a change in an order.[45]

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[44] See footnote 40, p. 285.

[45] On the calendar for February 7, 1917, fourteen cases were included in a resolution of which the first clause was as follows:

"*Whereas* the division of factory inspection has submitted to this commission the following requests for variation of law, made by the parties named

Importance of Deciding Whether a Variation Has or Has Not Been Granted

The insistence that in every case a determination should be made whether the relief granted is or is not a variation is not to be dismissed lightly. It may be that such a determination is immaterial from the viewpoint of the person directly affected, because what he is looking for is relief from an unreasonable burden and it makes no particular difference to him what the relief is called. The importance of the determination is that it decides the question whether new law is being made or whether it is the existing law that is being enforced. In other words, such a determination is necessary in order that the law itself may be definite, for every variation (whether it is called "major," "minor," or only a "modification") modifies the law in its application to certain circumstances and to that extent at least is a change in the law. Inasmuch as the commission, in interpreting and applying the law, has a comparatively wide range of administrative discretion there is, of course, no sharp

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herein, in which appeal is made from a strict compliance with the orders issued against the premises given below, *which would necessitate a variation of law.*" (Italics ours.)

Three more cases were included in a resolution of which the first clause was as follows:

"*Whereas* the division of factory inspection has submitted to this commission the following requests for extension of time for compliance with orders issued."

This shows that the inspection bureau is now classifying the cases according to the questions involved in the cases.

The above is but one of the ways in which the calendar has been improved. The practice that is growing up around the calendar furnishes a practical way of handling these cases and it is worth while to call attention to the recent development, *i.e.,* development subsequent to the period covered by the main part of this report. Thus, a more precise classification is being made of the cases; the distinction between "personal appearances" and "regular calendar" has been eliminated and notice is now given in every case that a hearing will be granted; the "blanket resolution" for disposing of all cases on the regular calendar has been discontinued and now a summary of each case is read and a separate vote of the commission taken on it; the term "modification" is no longer used as meaning a sort of variation but has been restricted to mean only such relief as may be granted by the inspection bureau in changing or modifying orders; the calendar is not entitled "minor variations and modifications" but is referred to as "the calendar"; and, finally, the bureau of inspection is endeavoring to keep off of the calendar all those cases which involve only a change in an order.

line to mark where the administrative discretion ends and the necessity for a variation begins. When a concrete case is presented the inspection bureau may have difficulty in deciding on which side of the line the case falls. But this difficulty does not decrease the necessity for a decision. All that is insisted on here is that somewhere in the commission a decision ought to be made as to just where the case does actually fall. If it is a variation it should be so declared, because it is a change in the law. If it is not a variation it should be so declared, because it shows a way in which existing law can be complied with.

Securing a Distinction between Review Cases and Variation Cases

When petitions are presented to the commission asking for relief from compliance with orders three decisions are possible: (1) to affirm the order and thus deny the relief; (2) to grant the relief by a change in the order where the order can be so changed without disregarding the requirement of law; and (3) to grant the relief by a variation from the law. The petitions should be handled by the inspection bureau and on this bureau should fall the burden of making the primary decision in the first two classes, that is, whether the relief must be denied or whether it can be given without a variation from the law. When the bureau decides the relief can be granted without variation from the law (*i.e.*, when it is within the administrative discretion) there would be nothing for the commission itself to consider and, the petition being satisfied, the case would end where it began—in the bureau of inspection. When, however, the bureau decides that relief cannot be granted by it (*i.e.*, when it is not within the administrative discretion) then its duty would be to notify the petitioner that the order is affirmed but that he may appeal to the commission from that decision or may petition for a variation. Judging by the experience under the present procedure there would be a small number of appeals to the commission from the affirmance of an order, but if any relief were asked it would be as a variation. The reason why there are at present so few attempts to have the commission overrule the action of the inspection bureau in affirming an order is that the decision of the commission on the same point depends largely on the information which comes from the bureau. This condition would probably continue under the procedure here suggested. The general result would be that except in unusual cases the commission would not have to pass on the

validity of orders but could give a greater part of its time to the consideration of variations.

There would be no necessity for prescribing, in fact it would be undesirable to prescribe, the procedure for such work on the part of the inspection bureau, because in the very nature of things it must be informal. But if, after the inspection bureau has made its decision, the petitioner desires to get before the commission itself, there seems to be no reason why he should not be made to comply with certain formal requirements. In notifying the petitioner of the decision of the inspection bureau notice could easily be given him of the exact courses open to him thereafter. He might be advised that by complying with certain requirements he could get his case before the commission to be determined as a review of the decision affirming the original order, or that he could take it up as a petition for a variation. Thereafter when these matters were submitted to the commission they would naturally be grouped into two classes, namely, petitions for review of orders and petitions for variations. Such a procedure would preserve the present informality of negotiation carried on between the petitioners and the inspection bureau and would specify only that if the petitioner wished a consideration of his case by the commission he would have to present it in a particular manner prescribed by the statute. When the cases were being considered, there would be no objection if the commission combined the proceedings for review with the proceedings for variation—as is done in the present practice. Such combination could be authorized in the statute by a provision to the effect that whenever on hearing a petition for review the commission is of opinion that a variation is justified then the commission should have power to grant the variation. A great deal of the confusion as to the difference between review cases and variation cases would be removed if the two sections numbered 52-a were rewritten in the light of the experience which has been had in their operation.

Court Review

Section 52-b provides for a review by the supreme court of the validity and reasonableness of any provision of the labor law and, on appeal from a review by the commission, of any rule, regulation, or order. Any person in interest may bring this action in the usual course by serving a complaint against the commission as defendant. The court may refer any issue arising in such action to

the commission for further consideration, and at any time during such action an application may be made to the court for an order directing all questions of fact arising upon one or more specific issues to be tried and determined by a jury. Section 52-c provides that all provisions of the labor law and of the rules and regulations and orders of the commission shall be valid and in full force and effect unless declared invalid in proceedings under Section 52-a.[46] Proceedings pending under Section 52-a or Section 52-b serve to stay prosecution brought for violation of the labor law until such proceedings have been disposed of.[47]

To review a provision of the statute an action may be begun in court without any prior application to the commission. Hunt *v.* Industrial Commission has the appearance of being such a case, but it cannot be so classified. There had been a prior application to the commission but the court action was begun independently and was not considered an appeal from the commission's decision. In this case the court was asked to review the validity and reasonableness of the provisions of Section 79-b, subdivision 2 (relating to stairway enclosures) as applied to three buildings owned by the plaintiff. The complaint (April 5, 1916) did not allege any previous order by the commission directing the plaintiff to comply with those provisions nor any previous determination by the commission as to their applicability to him, nor did it attack the reasonableness and validity of those provisions in their general application. It asked the court to declare them unconstitutional because of their alleged unreasonableness as applied to the particular conditions prevailing in the plaintiff's buildings. The subdivision in question contains a clause authorizing the commission to dispense with or modify its requirements in the case of certain buildings whenever this can be done without endangering the safety of persons employed in such buildings. The commission demurred to the complaint (May 4) and the supreme court in sustaining the demurrer (August 2) held that the plaintiff should first seek relief from the commission. The court said that if the provision in question were one as to which the

[46] There is an error in the law here. It should read "Section 52-a or Section 52-b."

[47] Section 52-a-5 gives a thirty-day period in which to appeal from the commission to the courts. Until this period has passed a prosecution that has been stayed by proceedings under Section 52-a cannot be revived.

commission had no such discretionary powers as those conferred in the section itself a different case would be presented.[48]

It may be remarked that the report of the case is not satisfactory, there being some difficulty in finding out just what question was presented to the court. The impression is created that what the plaintiff really insisted on was a determination that the provisions complained of did not apply to him or ought not to be enforced against him. If that was the situation, he was in effect asking for a variation and the court was clearly right in saying he would have to seek such relief from the commission. If, however, he was in reality attacking the constitutionality of that part of the statute of which he had complained it is not at all clear on what ground the court sent him to the commission.

An incidental ruling in this case was to the effect that prosecutions against the tenants of the building would not be stayed by this action on the part of the owner, the court holding that the relief of Section 52-c is purely personal and cannot extend beyond the individual taking advantage thereof.[49] This ruling while not exactly in point is nevertheless interesting as showing the judicial attitude towards Section 52-c on a matter which was discussed at the time that section was written into the law. At that time it was urged, in opposition to Section 52-c, that its effect would be to stay all prosecutions, in whatever part of the state instituted, under any particular section if any proceedings on the petition of any person were pending anywhere to review the validity of that particular section. The ruling that the relief granted is personal indicates that the opposition to Section 52-c, in this particular respect, was unfounded.

Although the complaint in the above case alleged no previous proceeding before the commission, as a matter of fact an order had been issued requiring compliance with Section 79-b and a verified petition for a review of the commission's order had been filed with the commission on February 3, 1916. Hearings were held on the petition and on June 14, 1916, an agreement was reached between the commission and the petitioner as to the orders for two of the buildings, but the order as to the third building was affirmed. From this decision an appeal was taken to the court on June 23. A copy of the complaint in this appeal was filed with the commission on

[48] *Law Journal,* August 2, 1916.

[49] *Law Journal,* May 23, 1916.

July 6, but the case has not been tried. Thus it will be seen that proceedings were pending before the commission at the very time the independent court action was begun, and that both the commission and the court were considering different phases of the same question at the same time. The proceedings before the commission were to attack an order while the court action was to attack a provision of the statute itself.

Records are available of eight other cases in which the commission has been notified of an appeal to the courts. In only four of these have complaints been filed. Three have not proceeded beyond the service of summons, and in one there has been nothing beyond a notice of appeal. None of the cases has yet been tried. In two of the eight cases prosecutions which had been begun by the commission were stayed by the petition to the commission and the subsequent appeal to the court. In one, Cockcroft *v.* Industrial Commission, prosecution was begun on January 10, 1916, and in the other, Apex Realty Co. *v.* Industrial Commission, prosecution was begun on December 19, 1916. The hearing of the court appeal in the Cockcroft case was set for October 23, 1916, but on that date an adjournment was granted. The commission, in hearing the original petition for review in this case (April 12, 1916), affirmed the order complained of, but advised the petitioner that he might petition for a variation. Advantage was not taken of this opportunity, however, and the petitioner appealed directly to the court from the decision of the commission affirming the order. In each of the eight cases the appeal was from a decision of the commission affirming orders issued by the bureau of inspection. In none was the question raised as to the validity or reasonableness of a rule or regulation.

Secretary's Office

The secretary is office manager and clerk of the commission. He keeps record of the commission's actions, carries on its correspondence, is custodian of supplies, is responsible for supervising the cashier and accountant of the department, and sees that the orders of the commission are carried out. He is also secretary of the industrial council and is responsible for keeping minutes of its meetings. To assist in performing these duties he has an office force of forty-seven employees, forty-two of whom are in the New York office, including two assistant secretaries, a cashier, an assistant

cashier, an accountant's division with seventeen employees, and twenty-three in other work of general administration; and five of whom, including a third assistant secretary, are in the Albany office.

The commission has given the secretary limited power to appoint minor clerical and other employees from civil service lists, the more important appointments being made by the commission itself. He has not been authorized to prepare a calendar of matters to be brought before regular administrative meetings, but several of the bureau heads, for personal reasons, or because their supervising commissioner was absent at the time, have taken matters to him to take before the commission. Preparation by him of a regular calendar for administrative sessions would probably prove helpful to the commission. In preparing its first annual budget for submission to the legislature the commission called upon each bureau head for requests for his own bureau and passed on these requests item by item, leaving the preparation of the final draft to the secretary. It would seem advisable for the secretary to be given more direct responsibility for preparing a preliminary tentative budget in cooperation with bureau heads and with the division of accounts which has all the records of personal service or expenditures. Defects or difficulties in the proposals of bureau heads could thus be corrected, and each item could be taken up by the commission with the bureau head, who should be present at the time his budget is discussed.

The secretary is responsible for fees collected for boiler and magazine inspection,[50] as well as for fees for lodging house licenses issued by the bureau of industries and immigration which are transmitted to him every six months by that bureau.[51] The former fees are sent to the state treasurer by the department cashier, the latter by the secretary who states that he is preparing to make the cashier responsible for lodging house fees as well as others. It seems advisable that all fees be handled uniformly.

The two assistant secretaries in the New York office have specific duties. One takes care of all compensation matters which pass through the secretary's office. He investigates complaints concerning the handling of claims, certifies award sheets, and, together with the other assistant secretary, signs checks for payments from the state fund. He also acts as secretary in that official's absence. The second assistant secretary in the New York office is responsible

[50] See "Bureau of Fire Hazards, Boilers, and Explosives," pp. 394 and 397.
[51] See p. 456.

for requisitions, purchases supplies and equipment, supervises the stock room, cares for the office, investigates securities, and handles all correspondence with self-insurers. As custodian of office supplies and equipment he has undertaken a campaign of economy, including the standardization of all supplies, substitution of less expensive grades wherever possible, and reduction of printing cost. Every requisition for supplies goes to this assistant secretary who, if it meets with his approval, makes four copies of it, of which one goes to the vendor, one to the state comptroller, one to the division of accounts, and one stays in the central office of the secretary. If the requisition involves expenditure of several hundred dollars, the assistant secretary tries to secure competitive bids and if for over $1,000 he advertises for bids. If he considers the requisition extravagant or impossible, he "lays it aside." If the head of the bureau thinks his requisition is pressing, he often comes after several weeks' waiting to the assistant secretary or the secretary for a personal conference. Because of this system of "laying aside" requisitions considerable misunderstanding has grown up between the secretary's office and the heads of the various bureaus. It seems advisable that a system of forms be devised for use in telling bureau heads why requisitions are not granted or have been delayed and, if delivery cannot be immediate, when they may expect to receive the goods requested. As the person in charge of self-insurance, this assistant secretary carries on preliminary correspondence with firms wishing to carry their own compensation risk, who submit financial statements to the commission, which he investigates. If he considers it safe to allow a firm to become a self-insurer, he requires the firm to deposit with the commission securities in proportion to its payroll exposure..

The last of the three assistant secretaries has general business supervision over the Albany offices of the commission, although directly responsible to the secretary. The secretary, himself, is in Albany one day a week while the legislature is in session, and about one day every two weeks during the rest of the year. At present all routine matters coming to the Albany office may be settled there immediately by the assistant secretary, but questions of policy are settled only in conference with the secretary.

In the handling of mail of the department, there is considerable confusion which the secretary is in a position to remedy. There is much chance for the straying of letters among the many offices in

several cities of the state. Moreover, inasmuch as few employees of the department understand its organization and functions, many letters that have been originally sent to a wrong office are forwarded to another which is also wrong.[52] The employees under the commission might profitably be educated concerning the functions of and the relation between the various bureaus and divisions by means of organization charts or a form letter from the secretary.

In the New York City offices the hundreds of people who every day have business with the various bureaus or divisions are greatly inconvenienced by lack of adequate notices to direct them to the office they seek. The offices extend over nearly three floors of the building, but no one of the floors has a directory for the other floors. Furthermore, although practically all of the aliens seeking the bureau of industries and immigration and a large per cent of the several hundred compensation claimants who come to the offices every day do not speak English, there are no signs in foreign languages, and it is very difficult even for those who read English to learn where to find a given office. An information office which advises compensation claimants has been established on the floor where the compensation hearings are held, but has not yet developed into a satisfactory information bureau for all visitors to the department.

Division of Accounts

A brief study of the records and procedure in the accountant's division shows that many improvements can be made in the present system, although it is evident that an attempt has been made to establish an accounting system along up-to-date-lines. This attempt has been somewhat frustrated by the procedure established by the state comptroller, which makes mandatory the use of certain forms which it would be difficult to make part of an accounting system based on the most approved business principles. Furthermore, the chief accountant has apparently all he can do to keep up the routine work and has but little time available for devising improved methods.

There is duplication of work in the maintenance of certain records. One of the most important books should be the appropriation ledger, for which the commission is at present using an ordinary loose leaf ledger sheet, not adapted for keeping the records of ap-

[52] An instance has come to light of a letter that was forwarded to six different offices of the department before it finally reached the proper hands.

propriations. It will be much more difficult to keep the records under the segregated form of budget adopted by the 1916 legislature than it was prior to that date, rendering all the more necessary the installation of proper fund accounting records. The "encumbrance" of funds at the time an order is issued has never been done properly and the control exercised over appropriations is necessarily only partially effective.[53] A "general ledger" is being maintained temporarily on the same kind of loose leaf ledger sheets as are used for appropriation accounts. Although the establishment of a general ledger is a step in the right direction, the present record leaves much to be desired. The actual general ledger of the commission is a bound book, provided with a lock, which at the time of the investigation contained no entries whatever. The department keeps records that are fairly well adapted for controlling the receipt and disbursement of supplies and materials on hand. No records are maintained in respect to equipment or of property owned and operated by the commission.

As state employees are paid semi-monthly, preparation of a time report for eight-day periods should be eliminated and a semi-monthly time report substituted therefor. If it were possible to prepare the payrolls on an expired period basis, *i.e.*, to transmit the payrolls to Albany when it is known exactly how much each man is entitled to for the period, the present time reports and payrolls could be consolidated. The payroll distribution book seems to be an entirely unnecessary record. A slight change in the method of preparing the payrolls and showing the distribution thereof at the foot of the duplicate payrolls would produce the necessary figures for posting to the expenditure accounts without any intermediate analysis record.

The receipt cards for comptroller's warrants covering personal services rendered are unnecessary, as all employees are paid by check. The payroll time card, although good in principle, lacks much of being an ideal report. Writing up new cards every year for over 600 employees involves considerable unnecessary work.

It is recommended that a new and complete system of central accounting records be installed which the chief accountant and his present staff could operate without any difficulty. In order that the

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[53] Improvements in this regard have been made since this report was prepared.

best possible results may be obtained, it is suggested that the commission take action to get the state comptroller to approve for adoption in the industrial commission a standard central accounting system, such as that developed by the Bureau of Municipal Research for the use of state departments.

Economies Effected by the Commission

Expectations of financial saving through consolidation of the compensation commission and the labor department under one commission, which were emphasized at the time the change was made, have been largely fulfilled. Whereas the total appropriation for the two separate departments for the year ending September 30, 1915, was $1,660,164.74, the amount on which the commission is expected to operate for the new fiscal year, ending June 30, 1917, is, despite its expanding duties, only $1,139,664, a reduction of over half a million. Although much of this reduction was accomplished by curtailing the force and the work of the department, about $200,000 of it can be credited directly to economies due to the consolidation. It must also be kept in mind that the 1916 legislature put both the state insurance fund and the workmen's compensation bureau on an entirely self-supporting basis, so that the state will be reimbursed for all money appropriated for them, even to a proportionate amount of the general overhead expense. This will mean a further annual saving of some $470,000.[54]

Conclusions and Recommendations

The commission's activities during its first thirteen months reveal great earnestness and willingness to sacrifice its time and energy beyond what the state could legitimately require. Due to the singleness of purpose and the broadmindedness with which the members attacked their task, they have succeeded to an encouraging extent in unifying the work of the department, improving the personnel and methods of several bureaus, and in enlisting the intelligent co-

[54] Commissioner Lynch estimates the number of compensable industrial accidents in New York state for 1916 as probably 60,000, the total economic loss from which would be about $30,000,000, or $100,000 every working day. If as a result of educational work by the department, this loss were reduced only 4 per cent, the saving would equal the entire cost of the commission, which deals with many matters besides accidents. Particular firms in the state have in two years reduced their accident rate 40 or 50 per cent.

operation of employers and employees in better administration of the labor law. If certain improvements need still to be made, this must be attributed not so much to lack of recognition of their importance as to the pressing nature of the commission's most immediate duties, which have considerably hampered the body in taking stock of its other work and planning further developments. In this report, which appears opportunely for the use of other states now launching out into the commission plan of administering all labor laws, the critical comments and suggestions have to a large extent been worked out after numerous personal conferences with subordinates as well as with members of the commission.

Perhaps the most important administrative problem now confronting the commission is that of freeing itself from the mass of detail work that is continually loaded upon it, in order that it may have more time and energy for considering general policies, initiating plans for extension and reorganization of work in the various bureaus, and promoting the establishment of codes. Three things at present interfere with this freedom: (1) devotion of such a large proportion of time to hearing compensation cases; (2) demands made upon the commissioners individually because of the responsibility of each for supervision over the detailed conduct of one or more bureaus; and (3) the extent to which details of office management which could be disposed of by the secretary, the bureau head, or intra-departmental committees, are brought before the entire commission.

There needs to be, furthermore, more direct contact between the bureau heads and the commission as a whole; the bureau heads need to learn more of what the other bureaus are doing and to have more of the spirit of pulling together in the interest of the department as a whole; and the commission itself needs to have more opportunity to become familiar with the work of the entire organization.

With these needs in view it is recommended that:

1. The administrative work of the commission should be reapportioned "at least once in each year" by formal resolution, as required by the law.

2. Instead of assigning individual commissioners to exclusive supervision over bureaus, the commission should designate standing committees of not less than three of its members to maintain gen-

eral oversight over phases of the department's work or over bureaus and to keep the entire commission informed as to progress in the field of activity under them.

3. Bureau heads should be required to bring at regular and frequent intervals all matters demanding the general consideration of the entire commission before it at designated administrative sessions. Previous to presenting any such matter the bureau head should if possible discuss it with the committee supervising the bureau, and should notify the secretary of it on the day preceding the session.

4. The secretary of the commission should prepare a calendar for each administrative session, listing the matters which bureau heads wish to present to the commission and a copy of this calendar should be placed in the hands of each commissioner on the afternoon of the day before each such session.

5. At least once each month all bureau and division heads should be called in for a conference with the entire commission regarding the progress of the department's work and general problems involving cooperation of two or more bureaus.

6. The commission should endeavor to secure the amendment of both Sections 52-a of the labor law so as to make the first of these cover the whole field of variations which the commission is authorized to grant and thereby constitute the exclusive power to grant variations; and to harmonize the procedure for review with the procedure for variations, and to authorize the combination of such procedures in certain cases.

7. The commission should by formal action determine who is to handle variation cases.[55]

[55] For a more specific recommendation on this subject, see recommendation No. 4 under "Bureau of Industrial Code," p. 323.

CHAPTER IV

Industrial Council

A new feature of the reorganized labor department under the industrial commission is the industrial council, a body of ten members representing in equal numbers employers and employees, created to advise and cooperate with the commission.[1] The law provides that the council shall select as chairman any person not a member, and that the secretary of the commission shall act as secretary of the council and keep records of all its meetings. The industrial commission is directed to submit to the council all questions of general policy in connection with the labor law, including the workmen's compensation act, as well as all proposed rules and regulations for the industrial code. The council is to give the industrial commission its advice on these matters and on the appointment of employees to positions requiring special knowledge or training, and also to cooperate with the civil service commission in conducting examinations and preparing eligible lists for such positions. All records of the industrial commission must be open to the council's inspection. Members receive no compensation or traveling expenses, and the law does not stipulate how often they shall meet.

The ten members of the council were appointed by the governor in August, 1915. Those representing the interests of the employees were selected entirely from the American Federation of Labor and related organizations, and included one woman. They were:

James P. Holland, New York, President, State Federation of Labor.
John C. Clark, Buffalo, Vice-President, State Federation of Labor.
Richard H. Curran, Rochester, Secretary, Rochester Molders' Union.
Thomas M. Gafney, Syracuse, Member, International Typographical Union; publisher, the *Industrial Weekly*.
Melinda Scott, New York, President, New York Women's Trade Union League.

[1] The council is not similar to the former industrial board either in functions or composition, nor is it identical with any of the advisory bodies established in connection with industrial commissions in other states.

Those appointed to represent the interests of employers were, with the exception of one New York City man, selected from the Associated Manufacturers and Merchants of New York State, an up-state organization with offices in Buffalo. They were:

Edward J. Barcalo, Buffalo, Barcalo Manufacturing Company.
Irving T. Bush, Brooklyn, Bush Terminal Company.
Carleton A. Chase, Syracuse, Syracuse Chilled Plow Company.
George E. Emmons, Schenectady, General Electric Company.
Richard C. Stofer, Norwich, Norwich Pharmacal Company.

Up to June 30, 1916, the council held a total of twelve meetings.[2] At the session in October, 1916, J. Mayhew Wainwright, formerly a state senator and chairman of the 1909 commission on employers' liability, was selected chairman. Rules were adopted providing for regular meetings on the second Wednesday of each month except July and August, and for special meetings upon call of the chairman either on his own motion or on written request of two members not representing the same group or on request of the commission. Standing committees of two members each were created to deal with the six subjects of organization and rules, industrial codes, civil service, legislation, mediation and arbitration, and workmen's compensation and accident prevention.

Attendance at meetings has hardly been commensurate with the importance of the council and the functions it was expected to perform. In accordance with the recommendations of the industrial commission, the law should be amended to provide for payment of the expenses of members in attending meetings. Except for one occasion there have been from two to five members absent from every meeting. Out of thirty-seven absences from the eleven other meetings, seventeen were of employers and twenty of representatives of employees. One labor representative has attended only three meetings. This large amount of absence on the part of representatives of employees may be chiefly ascribed to the fact that most of the members have to pay their own traveling expenses.

The council has, however, given promise of becoming a valuable factor in the development of labor legislation. Probably the largest service which it has rendered has been in bringing organized employers and employees of the state together and making them ac-

[2] Inasmuch as there was no meeting in July or August, 1916, the period of this study covers the first year's activities of the council.

quainted with one another's viewpoint. Between these two groups it has established a basis of understanding where previously there existed misconception and prejudice. Except, however, for the few matters referred to it by the commission, the council has from the outset had no very definite program, and has been uncertain about its functions and powers. In November, 1915, it discussed the latter question at length and voted to offer its advice to the industrial commission "not only upon matters which are brought before it by the action of the commission, but also upon new matters which it may desire the commission to take under consideration." During the first year of its existence, nevertheless, most of the important questions taken up by the council were referred to it by either the industrial or the civil service commission.

Activities of Council Resulting from Diamond Factory Fire

The council had scarcely organized when an event occurred which affected its activities for the next four months. On November 6, 1915, twelve persons lost their lives and thirty-five others were injured in the Diamond candy factory fire in the Williamsburg district of New York City. The newspapers at once sought to place blame upon the industrial commission for having permitted such a hazard to exist.[3] Public speakers and editorials bitterly condemned the commission for failing to extend the application of the factory building code to five-story buildings, such as the Diamond factory, as the amended labor law gave it power to do.

The third monthly meeting of the council came on November 10, just four days after this holocaust and before any public proceedings had been taken to fix the responsibility. The fact that the coroner purposed to make a public inquiry was discussed, and the commissioner in charge of the bureau of industrial code was invited to explain the situation relative to the various codes in the course of preparation or amendment. He stated that there would be submitted to the council at an early date a proposed code on dangerous machinery, one on mines and mining, and certain modifications of the code on fireproofing of buildings, on fire alarm signal systems, and on sanitation; and called attention to the need of an amendment to

[3] In February, 1917, the treasurer of a corporation which occupied a floor of the building at the time of the fire was sentenced to from two and one-half to five and one-half years' imprisonment for having the exit door locked.

the building code to make it apply to five story buildings. No definite proposals for new codes were put before the council and no further action was then taken, except to assure the commissioner that the council would hold a special meeting if necessary to consider the new codes.

Eight days later a special meeting of the council was called, at the request of the industrial commission, for advice as to whether a proposed amendment to the industrial code relating to enclosure of stairways in factory buildings to make it apply to all buildings under six stories in height should be advertised for new public hearings, or whether it should be adopted on record of hearings already held by the former industrial board. The commissioner supervising the bureau of industrial code, the first deputy commissioner, and the two deputies of industrial code appeared by request. After lengthy discussion a resolution was passed advising the commission to adopt the amendment without further public hearing, but to hold a hearing at the earliest possible date to determine whether the rule should be further amended. A member then brought up the question whether the commission should not have power to enforce the labor law and the industrial code by closing a factory building that was violating them, a method that was, as a result of the fire, being publicly advocated by certain groups. A motion was passed suggesting to the commission that it recommend to the next legislature an amendment to the law giving the commission this power.

Another special meeting was called December 28 to consider a resolution adopted by the industrial commission, "That the industrial council be, and it is hereby invited to make such suggestions as may be necessary in order to properly advise the commission with respect to the further performance of its duties." This was, in effect, an invitation on the part of the commission to the council to investigate the charges of inefficiency made against the commission by the coroner's jury in King's County relative to the Diamond factory fire. At about the same time the governor requested the council to investigate and report to him whether the commissioners, all of whom were then serving under recess appointments, should be nominated by him to the senate for the regular statutory terms. A resolution was passed asking the chairman of the industrial commission to come before the council and make a statement relative to the investigation proposed by the commission. The council also

requested the appearance before it of the commissioner charged with the supervision of the bureau of inspection, and the counsel whose duty it was to prosecute violations.

At this special meeting a resolution was passed that a committee of five, of whom the chairman was to be one, be appointed to consider the statements taken, together with the findings of the coroner's jury, and "to make such further inquiry and personal investigation of the methods of conducting the business of the bureau of inspection and the filing system otherwise as they may deem proper, and to report to the next regular meeting of the council." Two representatives of employers and two representatives of employees were appointed to act with the chairman on this committee.

The next meeting of the council, on January 12, 1916, when this special committee was to report, was the one already referred to as the only session at which all members of the council were present. It convened behind closed doors and proceeded at once to discuss the report. The chairman, one employer, and one labor member of the committee submitted what was called a "majority report," while the other two submitted a report offering recommendations. The council thereupon engaged in a lengthy discussion as to which of these reports would be accepted. Finally the so-called minority committee report was adopted by the majority of the council, and a resolution was passed containing the following concluding paragraph which expressed the sense of the council in regard to the matter:

> Resolved, That the council recommend to the governor that he submit all the names of the present industrial commission to the senate for confirmation, believing that the best interests of the state would be served thereby.

This recommendation was in effect an exoneration of the commission, and subsequent to it the governor sent the names of all the commissioners to the senate for confirmation, which was given.

A further reflection of the charges made against the commission, as a result of the Williamsburg fire, by the newspapers and by certain groups interested in the enforcement of labor legislation, was a resolution passed at the next monthly meeting in February urging the commission to procure the services of an "expert or experts on organization and efficiency to advise them as to their system, organization, and methods." On this recommendation the commission took no action.

Action by Council on Codes

One of the two chief functions prescribed for the council is assisting the industrial commission in the enactment or amendment of codes. Its activities in this direction, other than those already mentioned, may be summarized as follows:

A proposed revision of the rule relative to requirements for fireproofing stairways in factory buildings was presented to the council in February with the report that the commission had held hearings on it in four cities. This revision removed the defects of the rule which had caused so much criticism at the time of the Diamond fire. The amendment was approved with the suggestion that the term "combustible" as applied to the contents of buildings be changed to "readily combustible," which suggestion was not adopted.

At the May meeting the commissioner supervising the bureau of industrial code and two deputy commissioners explained to the council a proposed revision of the rule dealing with fire alarm signal systems, on which public hearings had been held. On the ground that the revision had been "carefully examined and approved by the engineers and electrical experts of the commission, and also of the fire department of the city of New York," a resolution was passed approving it, without detailed study by the council. At the June meeting the code committee, which had considered the matter in conference with the bureau of industrial code, recommended that a proposed new rule relating to fire escapes be approved, also a proposed amendment to a minor rule requiring flange connections on water-closet pipes, and a proposed rule relating to the employment of women in canneries. Public hearings on each of these rules had been held by the commission and attended by representatives of the council. Resolutions were passed by the council approving their adoption by the commission without further change.

Thus the council through its code committee has considered and approved the commission's proposals for codes, but has taken no initiative in suggesting new codes or amendments to rules. This policy should be changed, and the council should be made, as originally intended, a more vital part of the organization for building up the industrial code.[4]

[4] This recommendation is particularly pertinent in view of the failure of the commission to consult the council in the selection of advisory committees and development of further codes up to March 1, 1917.

Activities of Council in Relation to Civil Service

In carrying out its second chief function, cooperation and advice in the selection of technical employees for the labor department, the council seems to have encountered numerous difficulties. At its first meeting the council conferred with the civil service commission about the manner in which it might assist in the examination of candidates for the positions of deputy industrial commissioners in the bureau of industrial code and in the workmen's compensation bureau. It was agreed that the examination questions should be prepared by the examiner of the state civil service commission and submitted to two members of the council constituting a committee on civil service. This was done and at the second meeting of the council a committee composed of two members and the chairman was appointed to represent the council at an oral examination to be held by the civil service commission for these positions. This oral examination was held before the next monthly meeting.

At the November meeting the council was asked by the industrial commission to approve the appointment of two men selected from among the first four certified by the state civil service commission for the position of deputy commissioner in the bureau of industrial code. These two men were already serving on provisional appointments made the previous July, and a long resolution was adopted by the council approving their appointment permanently. The first ten names certified on the eligible list for the position of deputy commissioner in the bureau of workmen's compensation were then reported. Six appointments were to be made to this position, and five of the men certified were then serving as provisional appointees. Resolutions were passed approving the appointment of these five and also of one of two additional persons in the order named to fill the other vacancy, providing such appointment could lawfully be made from the eligible list.

At the December meeting the question of the advisability of oral examinations for other important positions under the industrial commission came up and a resolution was adopted to the effect that whereas the council believed that factory and mercantile inspectors should be given an oral as well as a written examination, "the civil service committee of this council take up the matter with the state civil service commission and endeavor to work out a plan and report to the council at the next regular meeting." The following subjects

were referred by the council to its civil service committee: oral examinations, character of questions to be asked at written examinations, method of advertising for applicants, requirements as to experience, and way in which defects in existing laws may be overcome.

Two motions were passed advising the civil service commission that the council considered that oral examinations should be held for the positions of chief mercantile inspector and editor of the official bulletin, and such examinations were later held. Another motion was passed advising the civil service commission that it was the view of the council that questions of experience should receive important consideration in determining the eligibility of applicants. At the January meeting two members of the staff of the senate committee on civil service presented the council with certain proposed specifications for civil service positions including standard requirements of experience and training for inspectors in the labor department. Consideration of these specifications was referred to the civil service committee of the council. Following this the members of the civil service commission came before the council for a general conference concerning the manner in which the council could cooperate in conducting examinations and establishing eligible lists, as required by law. The chairman of the civil service commission suggested that hereafter questions for written examinations should not be submitted by the civil service commission to the council except in special cases when the civil service committee of the council asked for the questions, and then only after formal action by the civil service commission itself. The method of holding oral examinations was also discussed at considerable length and the chairman of the civil service commission stated that his commission would be glad to hold oral examinations whenever possible, but that they were greatly hampered by lack of sufficient appropriations. The council was requested to cooperate in efforts to secure sufficient appropriations to carry out its ideas with regard to oral examinations.

The next occasion on which civil service matters came before the council was at the March meeting when questions on the law and model answers for the examination for factory inspectors, sent to the council by the civil service commission, were referred to the civil service committee for criticism and comment. Again, at the

April meeting, a communication was read from the civil service commission relative to announcing an examination for special investigator in the division of industrial hygiene and a resolution was passed urging that more weight be given to practical experience than to theoretical knowledge and that the minimum age be thirty years.

At the May meeting the secretary brought before the council the question of establishing an eligible list for factory inspectors and informed the council that the civil service commission had stated to the industrial commission that the rating of papers on this examination would probably be completed within two months. The civil service commission had called the attention of the industrial commission to the fact that oral examinations suggested by the industrial council would delay the establishing of an eligible list considerably longer. On behalf of the industrial commission the secretary suggested the advisability, because of the urgent need for more inspectors, of the council withdrawing its advice that an oral examination be held. The council, however, refused to do this and reaffirmed its previous suggestion.[5]

Again, as in the case of industrial codes, the council's activities in relation to civil service have been largely limited to routine approval of action proposed, and in many cases already taken, by the industrial commission. The one important contribution of the council was its emphasis on oral to supplement written examinations for appointment.

Consideration by Council of Amendments to Labor Law

While the 1916 legislature was in session the council considered several proposed amendments to the labor law. In February certain amendments to the workmen's compensation law proposed by the industrial commission were laid before it which, after suggesting a few minor changes, it approved. It also accepted an invitation from the industrial commission to meet in joint session to consider matters presented by the New York State Canneries' Association relative to legislation giving the canneries greater freedom from labor law restrictions. At the joint session, which was held a few weeks later, various individuals and organizations appeared in opposition to the proposed amendments. At the April meeting the

[5] An eligible list for factory inspectors was later established without oral examinations, and appointments were made from it.

council considered in detail another proposal to amend the labor law, which, following the council's recommendation, the industrial commission opposed. A resolution was then passed recommending that the commission seek to have incorporated in the workmen's compensation law a provision covering employees of restaurants, but the commission was unable to do this because the bill amending the compensation law was at the time on third reading in the senate and could not be changed.[6]

The Argetsinger bill, a compromise measure embodying various amendments to the labor law which had been discussed at the joint meeting already mentioned, some of which were aimed to raise the standards and others to afford relief to employers, was unanimously endorsed at the May meeting of the council. This bill passed the legislature but was later vetoed by the governor on the ground that it broke down the standards of the existing law to an extent far outweighing any benefit to be derived from the changes. At the same meeting the council passed a resolution urging the governor to approve the bill amending the compensation law, which he did. It also disapproved a bill to alter the powers and duties of the council which had been referred to it by the governor, and the measure was not signed by him.

Conclusions and Recommendations

The practical results and achievements of the industrial council have so far failed to prove it an important factor in the administration of labor laws in New York state. It seems to have groped rather blindly in an effort to establish some definite functions for itself. Its experience in an advisory capacity on code making has been of little significance. While it has paid considerable attention to civil service matters and to proposed labor legislation, its recommendations have not carried the weight or bulked as large as might have been expected from such a body and as a matter of fact they have not always been adopted or even given the consideration they deserved. Moreover, the industrial commission has been so busy with its new and complicated routine work that it has seemed to ignore the possibilities of usefulness of the council and has not referred to it many questions of general policy upon which the ad-

[6] This amendment was included among others submitted to the legislature by the commission early in 1917.

vice of the council would have justified the delay incident to such reference. Doubtless this will be remedied in time as the council and the commission become more accustomed to their work and are not so hard pressed by matters requiring immediate adjustment and decision.

It must be recognized therefore that the council is a new feature in the state administration of labor law, without much precedent to guide its development, and it should not be too rigorously judged during its formative period. Perhaps its effectiveness could be increased by adding to it members of the general public not actively affiliated with either employers or employees, who would bring to its deliberations valuable outside information and would emphasize a broad general welfare point of view. In Belgium, for instance, the "superior council of labor" established in 1892, a consultative body whose functions are very similar to those of the New York council, embraces among its forty-eight members sixteen who are neither employers nor employees but persons who have special knowledge of economic and social questions.

In order that the council may have a greater opportunity to demonstrate its possibilities for usefulness it is recommended that:

1. The commission should refer to the council more matters of general policy; should furnish the council with opportunities to familiarize itself more thoroughly with the activities of the various bureaus; should invite the council to initiate suggestions as to lines of activity to be taken up by the bureaus; and should arrange occasional joint sessions at which the council could offer advice and criticism based on its practical experience.

2. Greater use should be made by the commission of the council as a means of extending its educational activities throughout the state by way of developing better understanding of the purposes of protective labor legislation on the part of both employers and employees.

3. The commission should bring the council into closer touch with the initial preparation of new codes and amendments to codes, especially by giving the council as a whole more to do with the selection of advisory committees for code making.

4. The council should contain one or more employer representatives of the large industries centered in New York City and the law should be amended to include representatives of the general public not actively associated with employers or employees.

5. The law should be amended to provide for reimbursement of the members for actual traveling expenses in attending meetings, and an appropriation should be secured from the legislature for that purpose.

6. Council members should be notified of all public hearings of the commission in their home towns.

CHAPTER V

Bureau of Industrial Code

The act creating the industrial commission conferred upon the five commissioners direct responsibility for the preparation and adoption of rules and regulations constituting the industrial code and for the exercise of other quasi-legislative functions formerly carried on by the industrial board,[1] but gave them no agency for the initial consideration of such matters. On advice of the member assigned to supervise this work, the commission therefore appointed early in July, 1915, two deputy commissioners of industrial code at salaries of $3,500 a year each.[2] Under the general power of the commission to create such bureaus, in addition to those specifically mentioned in the law, as it may deem necessary, these two officials were constituted a bureau of industrial code. The supervising commissioner acts as head of the bureau, the two deputies being equally responsible to him.

The administrative minutes of the commission contain no resolution defining the duties of this bureau, but the understanding seems to have been that it was to have the same functions as the former industrial board, except that its work could be only preliminary to formal action by the commission. These functions had included not only the preparation or amendment of codes and the approval of fireproof material, fire partitions, fire doors, fire windows, fire alarm signal systems, and certain other safety equipment, but also consideration of requests for modification of certain mandatory provisions of the labor law. Under the commission the power to modify the law was widely extended by the provision for granting variations,[3] and consideration of variation petitions became part of the duties of the new bureau. A small exhibit of approved fire

[1] See "Development of Agencies for Administering Labor Legislation in New York State," p. 250.

[2] Two men were appointed provisionally, pending a civil service examination, which was held several months later and which both passed sufficiently high on the list to be given final appointment, in November, 1915.

[3] See p. 273.

alarm apparatus and safety devices left by the board came also under the bureau's charge.

Appeals from Factory Orders

When the bureau of industrial code took possession of the office formerly occupied by the industrial board, it found over 500 letters of appeal or protest relating to orders issued by the factory inspection division, part of which had been referred to the board by the subdivision of appeals.[4] Approximately 90 per cent of them arose from orders for additional fire exits, and most had never been answered even to the extent of acknowledging receipt. The commissioner in charge of the bureau states that he felt that analysis of these appeals would make clear the needs for new codes or amendments to existing codes. Their consideration involved study of all the records of inspection of the building in question, and, in many cases, additional field inspection. The commission authorized the two deputies to proceed in an effort to dispose of them individually, and this they did in conjunction with the subdivision of appeals until it was abolished in October, 1915, and, after that, with the assistance of the assistant chief factory inspector who had been head of the subdivision. Practically all of their time was taken up with these appeal letters from July, 1915, until March 3, 1916, when a tentative rule governing the acceptance of fire escapes as exits was put into practice and the task of considering appeals was transferred to the division of factory inspection. It was not till May 8, 1916, however, that the commission gave the bureau of inspection complete jurisdiction over all appeals from orders except when a variation from the law was requested, and the initial consideration of letters of appeal and protest was actually relinquished by the code bureau. By this time the new bureau had disposed of 647 letters of appeal and protest, but new ones had come in at the rate of about 100 a month so that the number finally turned over to the bureau of inspection was not less than the original number and included many that had been filed with the department when the old industrial board was still in existence.[5]

Field investigations of the most important cases were made by the

[4] See "Division of Factory Inspection," p. 339.

[5] By September 30, 1916, all appeals had been cleared up to date by the chief factory inspector in New York City by ordering all fire escapes to conform to the newly adopted Rule 4.

head of the former subdivision of appeals, and occasionally by the deputies themselves, but in all cases the bureau had to base its action largely on information secured from the files of the bureau of inspection. The continual removal of important records from the factory inspection files caused complaint from the bureau of inspection, and, in general, the plan of handling these appeals outside this bureau, the only agency having first-hand information about the conditions in question, proved very unsatisfactory.

Consideration of Variations

The practice in considering and acting upon petitions for variations from specific provisions of the labor law has already been analyzed in the chapter on "General Administration by the Commission."[6] Soon after it was organized the bureau of industrial code began to receive requests for variations and had to devote a portion of its time to investigating them and drawing up, for adoption by the commission, formal resolutions granting the variation requested. Their action was based upon information secured at public hearings and from the bureau of inspection. Because of the difficulty in using records from the inspection bureau's file, and also because of the efforts of each to retain jurisdiction over matters that were on the borderline between a petition for a formal variation and a request for modification of an order, there was constant friction between the two bureaus, which even went so far as to express itself in contention over who should have first possession of the mail on these matters addressed to the commission.

The main reason advanced for having petitions for variations, or appeals of any kind relating to orders issued, referred to the present bureau of industrial code instead of to the bureau of inspection, where they seem logically to belong, is that the petitioner or appellant will feel that his case is being considered by an unbiased authority. In either case, however, final judgment rests with the commission, and the information on which the code bureau acts in regard to existing buildings is secured through the bureau of inspection. The argument that the code making agency should be in position to know the difficulties involved in the enforcement of any rule or regulation adopted by the commission is, on the other hand, perfectly sound, and there can be no question that the code bureau

[6] See p. 273.

should participate in the consideration of all formal petitions for review of the validity or reasonableness of any rule or regulation. In all such matters, close cooperation between the bureau of industrial code and the bureau of inspection is essential. Perhaps the most expeditious method of handling all appeals requiring variations or formal review by the commission would be to put them under the jurisdiction of a committee representing both bureaus. It is recommended that the commission work out and formally adopt some such plan.[7]

Preparation of Codes

Except for readopting on June 1, 1915, the first day it was in office, the rule of the former industrial board permitting the employment of women in canneries not more than sixty-six hours a week for six weeks in the summer, the commission has followed the policy of referring all matters relating to the preparation of industrial codes to the commissioner assigned to supervise this work. Thus, also at its first meeting, it referred to him certain proposed rules for mines and tunnels and a proposed electrical safety code.[8] On August 31 a committee was appointed by the commission to confer with the technical board of the associated manufacturers and merchants regarding a substitute proposed by this board for *Bulletin 5* adopted by the old industrial board concerning fire alarm signal systems, and on October 26 the proposed draft of a substitute was referred by the commission to the bureau of industrial code with the request that the bureau develop a final revision of the code and hold hearings on it. Two and a half months later, on May 16, 1916, the bureau's final revision of *Bulletin 5*, establishing detailed technical regulations for fire alarm signal systems, was adopted by the commission as Rule 375 and went into effect immediately.

Previous to the Diamond factory fire on November 6, 1915, however, the bureau of industrial code had not attempted to prepare rules and regulations but had analyzed several hundred protests and appeals with that end in view. This material included little that would help the new bureau in taking up subjects not already covered

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[7] The commissioner in charge of this bureau has presented to the commission a plan for such a committee.

[8] The commissioner in charge of the bureau states that no action will be taken on an electrical code until the completion of a national standard code on this subject.

by the rules of the board. The code work had, furthermore, been delayed pending the civil service examination and final appointment of the two deputies. Criticism directed toward the commission after the fire for failing to amend the code relating to enclosure of stairways in factory buildings so as to cover buildings five stories in height resulted in the bureau's taking up at once the preparation of such an amendment, which, on advice of the industrial council, was adopted early in January, 1916, without further formal hearings beyond those already held by the former industrial board.[9] In the meantime the technical board of the associated manufacturers and merchants submitted a general revision of the entire rule, which was redrafted by the code bureau and after public hearings and approval by the council was adopted on February 10, 1916, becoming effective March 1.

On June 20 the commission adopted as submitted by the bureau a brief sentence amending Rule 120 of the industrial board relating to water-closet floor flanges, and also Rule 4, a new rule containing comprehensive specifications of fire escapes accepted as required means of exit. These three amendments, one reenactment, and one new rule represent the total result of work done on codes by the commission and this bureau during the first year of their existence.

In the preparation of rules the bureau of industrial code states that its procedure is to collect data and advice from manufacturers, representatives of employees, and other persons who may have special information on the subject; to organize a small advisory committee, which may be enlarged as advisable; to draw up with the help of a still smaller subcommittee of the advisory committee tentative rules which are submitted to the advisory committee for criticism; to advertise and hold hearings in various parts of the state; after all criticisms and suggestions secured through the hearings are assembled, to revise the proposed rules; and then to take them up for final agreement, section by section, with the advisory committee as a whole. The only rules formulated by the bureau necessitating the help of advisory committees, however, were Rules 4 on fire escapes and 375 on fire alarms. For the former the committee consisted entirely of employees of the department, including the two deputy commissioners of the code bureau, the civil engineer, a chief factory inspector and the chief counsel; for the latter it was

[9] For the council's activity in this matter see p. 305.

composed of members of the technical board of the associated manufacturers and merchants, one deputy code commissioner, and two fire prevention engineers from the bureau of inspection.

Communications from inspectors, department officials, and interested persons outside the department containing recommendations for new rules or changes in the existing rules have from time to time been referred to the bureau by the commission. Among these were proposed rules concerning explosives and boilers, a proposed revision of the elevator code, and recommendations as to exits, as to use of respirators, and as to guards for textile machinery. At various times, also, the commission has passed resolutions calling upon the bureau to prepare rules on safety valves on pressure tanks in factories, substitutes for wood alcohol in interior varnishing, electrochemical industries, ventilation, and aniline products. By special resolutions of April 18 and May 23, 1916, the commission authorized the bureau to appoint eight committees to consider rules concerning mines and quarries, dangerous machinery, artificial light, dangerous trades, wood alcohol, other poisonous ingredients, boilers, and width of aisles. It stipulated that these committees were each to be composed of three representatives appointed by the associated manufacturers and merchants and three representatives appointed by the state federation of labor. The manufacturers selected their representatives, but the federation of labor delayed the matter, pending an election of officers. Consequently up to June 30, 1916, nothing had been done toward organizing the advisory committees, and no tentative codes on these subjects had yet been prepared.[10]

No provision has been made by the commission for releasing the division of industrial hygiene from its more or less routine duties

[10] On March 1, 1917, a code on construction, installation, maintenance, and inspection of boilers had been prepared and tentatively adopted by the commission; tentative rules were also prepared and in process of discussion in advisory committees, on mines and quarries, dangerous machinery, and the following dangerous trades: dyeing and cleaning, thermometer manufacture, use of wood alcohol in interior varnishing, mattress making, and electrochemical manufacture. Rules for the prevention of anthrax are also being formulated. Steps have been taken toward organizing committees to prepare rules on artificial light, width of aisles, smoking in factories, and an amendment to the elevator code. The initial preparation of rules on the dangerous trades mentioned has been left largely to the division of industrial hygiene, but this division has been so largely occupied with other duties under the bureau of inspection, that it has not been able to devote its whole attention to these important codes.

under the bureau of inspection in order that it may give the technical assistance necessary in the preparation of these codes, and at the close of the period studied no cooperative relations had been developed between the two bureaus for code work. In the section of this report on "Division of Industrial Hygiene" it is recommended that that division be combined with the code-making agency in a new bureau under the immediate direction of a person with administrative ability and scientific training who is specially qualified by previous experience outside the department to direct research work in this field. This consolidation should be effected at once and provision made in the next annual budget for a director of the bureau with such qualifications.

The present organization of the bureau cannot be considered satisfactory for a code-making agency, not only because the bureau does not include the division of industrial hygiene, but also because it is not responsible to the commission as a whole. It is entirely under the supervision of one commissioner and has no single executive head who can be called to account by the commission. Inasmuch as this important function of developing a body of rules to supplement the law is, like that of deciding compensation cases, given directly to the commission without power to delegate it, the bureau to which such matters are referred for initial consideration should be responsible directly and absolutely to the entire commission. The whole theory on which industrial commissions have been established is that they will act collectively in the exercise of powers that could not properly be entrusted to a single official. The ideal plan would be for the entire commission to keep in constant touch with the details of preparation of all codes and to be in a position to determine from first-hand knowledge whether satisfactory progress was being made and whether the work was being pushed along with sole reference to the urgency of the need for further standards. This may not be possible for some time at least, because of the mass of other work demanding the attention of the commission, but a committee of three commissioners should maintain general supervision over the bureau's work and a director should be placed at the head of the bureau who will be responsible directly to the whole commission. All questions of policy in selecting the order in which rules or regulations shall be developed should be determined by the commission itself.

Approval of Fire Alarm Apparatus and Other Safety Equipment

While final approval of fire alarm apparatus is under jurisdiction of the bureau of industrial code, it in practice refers these matters to a "board of approval," established by rule of the former industrial board, consisting of one of the deputy commissioners of industrial code, the fire prevention engineer of the division of industrial hygiene,[11] and a representative of the fire commissioner of New York City. During the period studied, this board passed on forty-four pieces of fire alarm apparatus of which it approved all but one, and twenty fire alarm signal systems of which it approved thirteen.

In the approval of fire resisting and fireproof materials and other safety equipment the bureau of industrial code has been assisted by the mechanical engineer[12] and the civil engineer of the bureau of inspection. In the nine months ending June 30, 1916, the bureau approved four fire doors, two fire windows, two water-closet flanges and thirty-five mechanical devices, chiefly electric contact devices for elevators. It would seem advisable that the approval of these materials be also turned over to the board of approval in order that uniformity may be assured between the standards set by the New York City authorities and those set by the commission for the rest of the state. Approval of other safety equipment should be by a committee including a representative of the bureau of inspection and the mechanical engineer of the state fund.

Safety Exhibit

When the commission entered its new offices at 230 Fifth Avenue, New York City, a room was set aside for a safety exhibit and in it were placed the various pieces of approved fire alarm apparatus that were inherited from the old industrial board, models of buildings showing fireproof stairways, and photographs used in the department exhibit at the San Francisco exposition. But little by little the room came into demand as a storage place for stationery, blank forms, and other articles not wanted elsewhere, until by June 30, 1916, it could hardly be entered. Then a part of it was par-

[11] This position was vacated by elimination from the appropriation law in 1916. The first deputy commissioner in charge of the bureau of inspection, or some person designated by him, should be authorized to act on the board in this place.

[12] No appropriation was made for this position after July 1, 1916.

titioned off for another purpose. The small amount of material on hand has deteriorated and no effort has been made to develop an exhibit of real educational value. An exhibit worked out along the lines of those in the field of health, anti-tuberculosis, child welfare, and other educational movements, would prove of tremendous value. It could be designed not only to give employers and employees instruction in industrial hygiene and safety methods but to give the public generally a better conception of the scope and importance of the work of the department.[18] As soon as it is practicable in view of other pressing work, the commission should appoint a departmental committee, on which should be a medical inspector, the chief statistician, and the secretary of the commission, to assist the bureau of industrial code in preparing such an exhibit, which should be so constructed that portions of it at least can be shipped from city to city through the state.

Conclusions and Recommendations

In view of the vital importance of enacting and continually improving rules and regulations supplementing the labor law, it seems a mistake for the commission to have continued to allow the bureau of industrial code to devote such a large proportion of its attention to considering letters of protest and appeal beyond the first three or four months of its existence. It must be remembered, however, that when the commission came into office the whole question of appeals, code making, and factory inspection was in a chaotic condition, and the most pressing necessity naturally seemed to be that of getting rid of the accumulation of appeals left by the old industrial board. These appeals and subsequent applications for variations might have been disposed of more expeditiously if the code bureau had more promptly taken up the preparation of rules to meet the difficulties responsible for them, and had shifted the initial consideration of appeals on existing buildings to the bureau of inspection, but, by handling more than 600 of these appeals itself the code bureau did gain a degree of first-hand knowledge of the defects of the existing industrial code which later proved of great benefit to it.

The bureau is at present unsatisfactorily organized in that it does not include the division of industrial hygiene and is not in charge

[18] The need for such an exhibit was very apparent at the state industrial congress called by the commission at Syracuse in December. Although the commission was promoting the congress it was unable to have an exhibit.

of a single head directly responsible to the commission as a whole. Instead of close cooperation between the bureau of inspection and the bureau of industrial code, which is essential in order that the work of either be effective, there has been constant friction.

Suggestions for reorganization of this bureau and development of its work are embodied in the following recommendations:

1. A new bureau should be organized which will combine the division of industrial hygiene with the function of code making. Provision should be made in the next annual budget of the department for a person with administrative ability and scientific training who is specially qualified by previous experience outside the department to direct research work in this field and as director of the new bureau he should be responsible to the commission as a whole.

2. Three members of the commission should be designated by the commission as a standing committee to maintain general oversight over the work of the bureau, keep the commission informed as to the progress being made, and to act for the commission when necessary in conducting hearings on code matters.

3. The energy of the reorganized bureau should be concentrated as far as possible on the preparation of new codes and on the preparation of educational material, as suggested in the section of this report on the division of industrial hygiene.[14] This educational material should include permanent exhibits illustrating satisfactory methods of compliance with the standards of the labor law and codes and also presenting the scope of the work of the department.

4. The commission should adopt a plan whereby all applications for variations and all verified petitions for review by the commission of the validity or reasonableness of any rule, regulation, or order made by the commission, will receive initial consideration by a committee on which both the bureau of inspection and the bureau of industrial code should be represented.[15]

5. All activities of the bureau should be conducted in close cooperation with the bureau of inspection, particularly the division of factory inspection, and the preparation of educational material should also be in cooperation with the bureau of statistics and information and other bureaus under the commission.

[14] For further recommendations relative to the work of the division of industrial hygiene, see p. 389.

[15] For further recommendations relative to variations, review by the commission, and appeals, see section on variations, p. 273.

CHAPTER VI

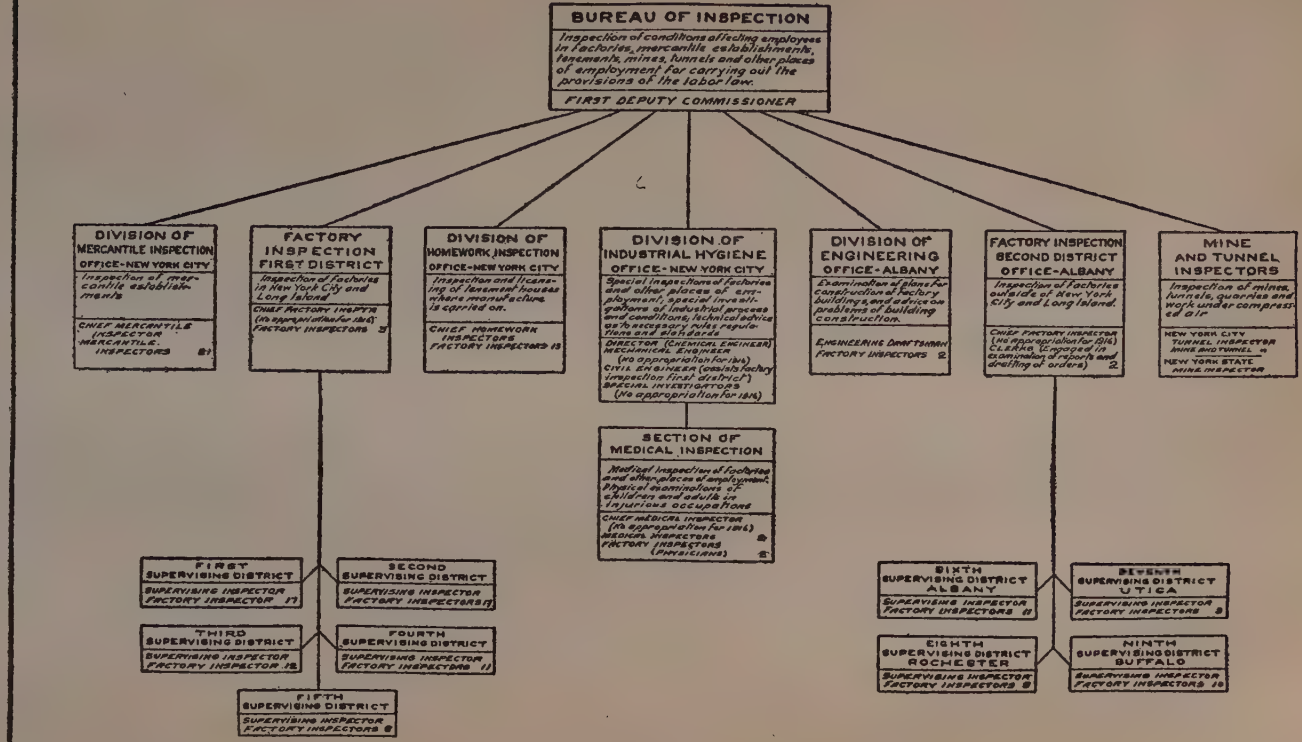
Bureau of Inspection

From the standpoint of the safety and health of the state's 3,000,000 wage-earners, there is no more important part of the industrial commission organization than the bureau of inspection, which has to do with enforcing the large body of labor law regulating conditions in factories, mercantile establishments, and other work places. The various divisions dealing with inspection were first brought together in a single bureau by the reorganization of the labor department in 1913. When the commission was established this bureau became a part of the new department with practically no change. The commission assigned responsibility for general supervision over the bureau to the former head of the labor department and matters of general policy concerning it have been acted upon by him in much the same way as before the commission was established. In July, 1915, shortly after the commission took office, it appointed as first deputy commissioner, with whom rests immediate direction of the bureau, the former chief mercantile inspector, who had proven an efficient administrator of his division. His headquarters are in the New York office of the commission but his time is about equally divided between New York City and upstate.

Within the bureau of inspection are the five divisions of factory inspection, mercantile inspection, home work inspection, industrial hygiene, and engineering, the last of which is relatively unimportant. The law provides that there shall be a maximum of twenty mercantile inspectors, including at least four women, but inspectors for the other divisions are all classed as factory inspectors, of whom there are to be at least 125, thirty of whom may be women, divided into seven arbitrary salary grades. The actual number of inspectors in each division varies from year to year according to the amount appropriated by the legislature for salaries. In addition to the five divisions there are several field inspectors who work independently under the immediate supervision of the first deputy commissioner and the supervising commissioner. These are a "mine" inspector,

NEW YORK STATE INDUSTRIAL COMMISSION
DEPARTMENT OF LABOR

CHART B



with headquarters at Albany; a "tunnel" inspector, and a "mine and tunnel" inspector who work in New York City inspecting caisson and subway work; and a special agent in the Albany office who makes field investigations on complaints relating to payment of wages, hours of labor on railroad work, hours on public work, one day of rest in seven, and other miscellaneous matters.

Study of the work of the divisions under the bureau of inspection has necessarily been confined almost entirely to methods of office administration. Although a few field trips with inspectors have been undertaken to learn the general procedure followed, no attempt has been made to appraise their individual effectiveness or to investigate conditions which they may be neglecting or covering inadequately. Furthermore, no effort is made to analyze critically the general standards prescribed by the law, except where questions of organization and administration are involved.

Division of Factory Inspection

The present payroll of the division of factory inspection includes 112 inspectors and thirty-three other employees. There are eight supervising factory inspectors receiving $2,500 annually, three inspectors at $2,000, ten at $1,800, thirty-one at $1,500, and sixty at $1,200.[1]

Two main districts of factory inspection were established by law in 1913, the first inspection district including all of Greater New York and the counties of Nassau and Suffolk on Long Island, and the second inspection district all the rest of the state. The industrial commission is empowered to "from time to time divide the state into subdistricts, each of which shall be under the supervision of a supervising inspector." At present the first inspection district is divided into five subdistricts (or "supervising districts" as they are more generally called) with a total of sixty-five inspectors, ex-

[1] Two chief factory inspectors at $4,000 and two assistant chief factory inspectors at $3,000, whom the law provides for, were eliminated from the 1916 appropriation, and the work formerly done by these four officials is now handled by the first deputy commissioner, assisted by the former assistant chief factory inspector in the up-state district, who now holds the position of supervisor of the Albany supervising district. The first deputy commissioner is, therefore, in immediate control of the supervising factory inspectors, and is giving practically all of his time to the direction of factory inspection.

clusive of supervisors. The remainder of the state is divided into four supervising districts, with central offices at Albany, Syracuse, Rochester, and Buffalo, and eleven, nine, eight, and nine inspectors respectively.

The number of women inspectors in the factory inspection division is small. Five are engaged in field work in New York City and one up-state, covering districts where large numbers of women and children are employed. One who receives $1,200 a year acts as chief clerk in the New York office of the division, distributes mail for the entire floor of the building, including offices outside the bureau of inspection, and looks after supplies. Two others examine orders recommended for issuance by the field inspectors and direct the form in which these orders shall be sent out.

Cost

The total annual cost of the division exclusive of rent and general overhead charges for the fiscal year ending September 30, 1915, was:

Salaries	$213,033.43
Traveling	41,736.79
Stationery and printing	7,234.82
Furniture and fixtures	1,830.87
Stamps	151.67
Miscellaneous	92.55
Total	$264,080.13

Scope and Procedure of Factory Inspection

When the new division of factory inspection set out to enforce the radical and far-reaching extensions of the labor law enacted in 1913, the difficulties it encountered in connection with the new standards as to fire exits and structural conditions in factory buildings overshadowed all other problems. Many hundreds of thousands of dollars' worth of reconstruction and installation had to be ordered, and untrained inspectors were called upon to give technical instruction to building owners, contractors, and architects as to methods of complying with the law. From then until now the predominating feature of factory inspection, particularly in New York City, has been the prevention of fire hazard. After October 1, 1916, however, all jurisdiction over structural conditions of factory buildings in New York City will be turned over to local authorities, as

provided in an amendment to the labor law passed early in 1916. This change in jurisdiction will enable the New York division to concentrate its energies on other phases of factory inspection and other hazards, relatively greater in terms of actual injuries or loss of life to workers, that have up to this time been necessarily neglected.

The procedure of factory inspection varies of course in different types of buildings and in different industries. Assuming that the inspector is visiting a small tenant factory above the second floor, on entering the building he measures the width and pitch of the stairs, the height of the ceilings, and observes whether the material of which they and the inclosure are made is fireproof; notes the size of the landing, the number of doors opening on the stairway, and incumbrances that might interfere with the escape of employees from the factory in case of fire or panic; and if there is an elevator or a hoistway in the front of the building, he notes whether the shaft is properly safeguarded and the cables are in a safe condition. He then introduces himself at the factory office, asks to be shown through by the proprietor or some responsible person in charge, and inquires as to whether any children under the age of sixteen are employed. If so, he asks for their employment certificates, which are supposed to be on file and which he takes with him into the factory.

On locating the place where an abstract of the law is posted, the inspector stamps his name and the date at the bottom of the poster, which stamp serves as a record of his visit. He notes the date of last inspection. If the law is not posted as required, he gives the person accompanying him a copy of it, requesting that it be posted before he leaves the building. If children are found illegally employed they are ordered dismissed at once and a record is made of such data as will be necessary for reporting the violation for prosecution. If no schedule of the hours for women employees has been posted the employer is requested to state the hours at which he wishes the women to come to work, go to lunch, return in the afternoon, and leave in the evening on each of the six working days of the week. These hours are written by the inspector on a blank which must be signed by the employer and posted before the inspector leaves the factory. The employer is warned that if he employs women on any day outside of the hours specified it will be a violation of the law and he will be prosecuted therefor. There are

certain occupations prohibited to female employees, such as work involving exposure to lead poisoning, for which the inspector is expected to watch. He is also expected to enforce the provision of the law relative to seats for women. It is very rarely that he secures information on which to take action relative to the employment of women within the prohibited period after childbirth.

The inspector may next turn his attention to the sanitary conditions of the factory. He must inspect the water-closets as to number in proportion to the number of employees, as to cleanliness and condition of repair, as to lighting and ventilation, as to screening of the entrances from the workrooms, and as to separation of toilet facilities for males and females. He must also note the washing facilities provided in proportion to the number of employees and whether or not the sinks are located where they can be conveniently used. Other matters included in the inspection of sanitary conditions are provisions for dressing or emergency rooms for female employees, individual towels, "clean and pure" drinking water, individual drinking cups or glasses, and general cleanliness or repair of the workrooms, halls, and premises. In any factory or working place where lead, arsenic, or other poisonous substances or injurious or noxious fumes, dusts, or gases are present in harmful quantities it is the duty of the inspector to see that a suitable place is provided where employees may eat meals outside of the workrooms.

In regard to ventilation and lighting the inspector has certain broad general powers but no definite standards. He is expected to report whether natural ventilation is adequate, and, if not, what provision is made for artificial ventilation; whether there are any unnecessary dusts, fumes, or gases that might be injurious to the workers; and how these dusts or fumes can be removed. The tests used by him have been chiefly those of observation and smell. The regular inspector applies no test for humidity. If he observes that dust is thrown off in injurious quantities from any particular machine, he will order that provision be made for removing it, and if he is able will offer suggestions as to how this may be done. An employer frequently insists that there is nothing injurious about the dust or fumes in his plant, and that the removal of them is impracticable. In such cases the question is sometimes referred to the division of industrial hygiene. Examination of the lighting of the

factory workroom consists merely in personal observation as to whether the light seems sufficient. The inspector may suggest that stronger artificial light be provided, or may call the attention of the employer to lights causing glare in the eyes of workmen, but because of lack of standards no orders, except orders to clean windows and whitewash walls, have been issued in regard to lighting.

The inspector may next turn his attention to the machinery and conditions which might cause accidents. It is his duty to observe the danger points of all machinery, to explain them to the person in charge who is accompanying him, and to issue orders for safeguarding them. In a large factory using much machinery the inspection for accident prevention may in itself take a week or longer. Although the methods of accident prevention have in recent years become fairly well standardized, the New York inspector is, in this phase of his work also, handicapped by lack of departmental rules to supplement the law. He does nothing, for example, in regard to width of subsidiary aisles in workrooms where machinery is used, because he has no standard to enforce.

Before completing his inspection the inspector must make a complete survey of the building itself, including measurements of farthest distances from exits in workroom, examination of the number and structural character of exits, fire walls, and fireproof windows. If the factory uses power-driven machinery and employs more than ten persons, he asks to be shown the required first aid kit, which must conform with certain detailed provisions of the industrial code. If the employer is not carrying compensation insurance the inspector is expected to report the fact on a special form, which is forwarded to the state fund. On returning to the factory office the changes necessary to bring about compliance with the law are written out, read to the employer, and explained. If the employer is not also the owner of the building, the inspector next endeavors to find the owner or person in charge, to whom he explains the structural changes that must be made in the building to make it conform with the law.

No prosecutions are instituted without the issuance of orders except in cases of illegal employment of children, illegal hours of labor, and locked door violations. There is nothing in the law to prevent immediate prosecution for other violations, but courts would be likely to dismiss any case, except of the kind above mentioned, unless it were based on a specific written order.[2]

[2] See "Legal Division," p. 486.

In addition to enforcing the general regulations applying to all factories, the factory inspection force is responsible for enforcing certain special regulations applying to bakeries, canneries, foundries, and scaffolding and building work. Bakeries outside New York, Buffalo, and Rochester[3] cannot operate without a certificate of conformity to certain special sanitary requirements of the labor law. The former practice of assigning one inspector in each supervising district up-state exclusively to bakeries has been given up on the ground that it is wasteful of time and traveling expenses. "Sanitary certificates" are not renewed annually as the law provides because it is considered unnecessary.

Canneries are subject to special regulations relating to sanitation, women's hours of work, and child labor, and the enforcement of the general regulations on child and woman labor requires special assignment of inspectors in the summer.[4]

The factory code contains extensive regulations concerning equipment and ventilation, safety of gangways, lighting, heat, accommodations for workers, condition of repair of tools and apparatus, and employment of women in core rooms, but has proven extremely difficult to enforce because such indefinite terms as "suitable," "sufficient," and "properly" are used repeatedly instead of definite standards. No survey of foundries in the state has ever been made, and no one knows exactly how many there are, though there are very few in New York City. It would seem advisable that one or two qualified inspectors be trained to inspect foundries and be assigned to make a complete survey of the conditions existing in them throughout the state.

Inspection for the enforcement of the provisions of the labor law intended to secure the safety of scaffolding, ladders, ropes, flooring, and other points of danger in the painting, repair, and construction of buildings, is not required by law except on complaint. In New York City the bureau of buildings supervises the construction and repair, but not the painting of buildings. In the nine months ending June 30, 1916, the bureau of inspection issued 1,103 orders relating to buildings under construction and secured

[3] In these cities of the first class they may be inspected as factories but not under the bakery law.

[4] In the summer of 1916 one-half the force in each supervising district was assigned to cannery inspection, and, for the first time, every canning factory was covered on an average of once a week.

1,128 compliances (including compliances with orders issued previous to this period).[5]

Activities Other Than Regular Inspections

Regular inspection of factories and other work places, just described, is only a part of the activities involved in enforcement of the labor law. A large portion of the time of the inspection force must be devoted to what are called "investigations of complaints," "special inspections," and "special investigations."

Delay in investigation of complaints of violations and frequent loss of the complaints themselves have brought much criticism on the department. Until October, 1915, anonymous complaints, complaints from the New York City Fire Department, and other signed complaints, were entered separately in long hand in three huge ledgers. The original complaints were then sent to the supervising inspectors, who distributed them for investigation among the inspectors covering the districts concerned. This distracted the inspectors from their regular duties and also gave them a chance to cover up shortcomings in their routine work. Signed letters of complaint were not answered until after investigation, and went unanswered if the complaints were lost. Since then, however, improvement has been made in the method of handling them. A signed complaint is now immediately acknowledged by a form letter, which states that it will be referred to the proper person for investigation. Three copies of a special blank are then filled out with the facts alleged.[6] One copy is held in the central office, another given to a factory inspector for investigation, and the third held by the supervisor as a check on the inspector. One especially trustworthy inspector in each supervising district is assigned to investigate all complaints, and to make investigations of alleged seven-day work and overtime at the times when such violations would be going on. The changes are resulting in much greater promptitude and efficiency of investigation.[7] If the investigation of a complaint fails to reveal illegal conditions, it is recorded

[5] In this period investigators of the division of industrial hygiene made 103 inspections of building work. They did not prepare any report summarizing the results of these inspections, most of which were on complaint.

[6] These forms, which are called "Reports of investigations of complaints" were first printed in January, 1915, but do not seem to have been much used until several months later.

[7] In one supervising district in September, 1916, practically all the com-

merely as an "investigation of complaint," but if illegal conditions are found it is classed as a "special inspection."

The term "special inspection" is now used by the factory inspection division to designate an inspection covering only a few points of the law. Most "special inspections" are the result of complaints; some, such as those made outside regular working hours in order to discover violations of the one day of rest in seven law or of the restrictions on women's and children's hours, may follow the discovery of suspicious conditions on a regular inspection. It is acknowledged that during most of the period covered by this study, owing to the pressure of work on the provisions for structural safety and fire prevention, New York City inspectors have been able to give little attention to violations of hours and weekly rest day laws.[8] The extent to which inspections are made on Sundays and outside regular business hours by the up-state division cannot be ascertained from the inspectors' daily summaries, because of the common practice of the up-state inspectors of charging time spent in traveling as "overtime."

A "special investigation" is a type of visit which is neither to secure compliance with an order nor to detect violations, but to give advice about an installation or information about a law, to attempt to adjust an appeal or a protest against an order,[9] or to secure evidence regarding a request for exemption. Such visits are usually

plaints were investigated and tabulated within one week from the date of receipt. Formerly delays of one to two months were not infrequent. Beginning July 1, 1916, the clerk receiving the original complaints reports monthly to the first deputy commissioner on the number of complaints referred to each supervisor. Supervisors are then required to account for the complaints and report whether they have been sustained. The removal of structural improvements in New York City from the jurisdiction of the labor department has lessened the pressure of work, reduced the number of complaints, and made prompt handling easier.

[8] Since the change in the law went into effect, the first deputy commissioner has made a rule that each inspector shall spend two nights a week in the field covering the industries most likely to be employing women and children illegally. Inspectors need not report for duty till 1 P. M. on the day following evening work. No general rule has been established about Sunday inspection, but several supervisors require that inspectors visit on Sundays any factory which they believe from their regular inspections to be operating seven days a week.

[9] Until October 1, 1915, appeals from orders were investigated by a special subdivision of appeals. The confusion resulting from the large number of these appeals and the lack of a systematic method of handling them is discussed elsewhere in this study. (See pp. 315 and 339.)

made by the regular inspectors only on instruction by their supervisors. Appeals which the division does not succeed in adjusting go to the bureau of industrial code or to the commission.[10]

Inspectors' Reports and Issuing of Orders

The large amount of time used by inspectors in writing up their daily reports, which had been severely criticised by the factory investigating commission was, even before the industrial commission took office, reduced to a minimum by the introduction of report blanks which can to a considerable extent be filled in during the course of an inspection. As a rule it now takes only about half an hour to write up any necessary supplementary reports after stopping field work, and the more devoted members of the force do this in the evening on their own time. Inspectors mail their reports daily to the central office in New York or Albany. There a clerk checks over the list of establishments on each "daily summary of work" with the other reports accompanying it, takes off material for the general summary, and turns over the inspector's report cards and daily summaries to the supervising inspectors, with a note of any missing reports, which the supervisors are responsible for securing.

The "factory inspection" report cards, the list of orders recommended by the inspector and the special reports of violations go to two "examiners," experienced women factory inspectors, who are responsible for the checking and formal issuance of all typewritten orders. The examiners compare the proposed orders with the statement of conditions, return the reports to the inspectors for an explanation if any necessary orders seem to be missing; cross out any orders that seem impracticable, consulting the supervising inspectors on doubtful points; and correct the orders, according to a code, to make their language uniform. After each order the examiner notes the time to be allowed for compliance: on an order to safeguard a machine or to clean floors or water-closets, compliance must be immediate; to install more adequate toilet facilities or to whitewash walls, ten days are allowed; for an additional means of exit, or a fire escape, involving slight reconstruction of the building, twenty days; and for the installation of an exhaust system or for important structural changes, such as the fireproofing of a stairway or the construction of an entirely new exit, thirty days.

[10] See "Variations," p. 273.

The cards containing the orders then go to the "notice writers" who type the orders in full on quadruplicate forms. The first goes to the person responsible for correcting the violation. Another, containing spaces for recording all important steps taken toward securing compliance, goes to the factory inspector. This is called the "compliance sheet." The third and fourth copies, on which the same entries are supposed to be made as on the compliance sheet, are held, one by the supervisor, and the other in the general office files of the division.

Compliance Visits and Reference to Counsel

Issuance of orders is usually only the first step toward securing actual compliance with the law. As soon as the period allowed for compliance with an order has expired, a reinspection, which is called a "compliance visit," is made to see whether the violation has been removed. In the coroner's report on the Diamond factory fire the department was particularly criticised for delay and ineffectiveness in securing compliance with orders issued.[11] It was then the practice for the inspector to mark an order "Refer to counsel" after the first unsuccessful compliance visit. When returned to the office orders thus marked were stamped "Referred to counsel," without any date. Decision as to when a case should be turned over to counsel or when the time for compliance should be extended rested largely with the field inspector. Counsel sent out form letters to the factory owner or occupier, signed by himself, threatening prosecution if there was not immediate compliance. The "compliance sheet" was then placed in a pigeon hole until the inspector came in, when it was returned to him. On counsel's advice any number of further visits might be made by the inspector in an effort to secure compliance without actually taking the matter to court. It was not uncommon for seven or eight such visits to be made before prose-

[11] The discrepancy between the orders issued and the compliances secured in the year ending September 30, 1915, is shown by the following numbers of orders issued and compliances reported, by inspection districts:

	Orders	*Compliances*
First district	101,360	80,862
Second district	62,608	54,835
Total	163,968	135,697

The number of inspections on which these orders were issued was 24,130 in the first district and 11,666 in the second, making 35,796 for the state.

cution was instituted, and after prosecution was started as many more visits as there were adjournments of the case by the court. All this time the compliance sheet, the only live record in regard to the condition of compliance, was carried around in the pocket of the inspector or left at his home. The only direct source of information the supervisor had in regard to the additional compliance visits was a brief entry on the inspector's daily summary of work, which consisted only of the name and address of the establishment visited. Supervisors were not required to keep a record of outstanding orders or of cases referred to counsel. No entries were made on the copy of the orders in the general files.

Responsibility for supervising the efforts to secure compliance before prosecution, with the exception of the first compliance visit, therefore rested with the counsel, an official entirely outside the bureau of inspection, instead of with the supervisor of the district. There was, furthermore, a great deal of shifting of responsibility from factory inspector to supervisor, from supervisor to his superiors and vice versa, which left the individual inspector in a state of constant confusion and uncertainty and placed the ultimate responsibility on him for making many decisions that should have been made by his supervisor. The evasion of responsibility by the supervisors took the form of indefiniteness of answers to inquiries from inspectors in the field for interpretation as to the application of the law to some particular situation, or failure to give important instructions to the inspectors in writing so that they might have full confidence in their own position in carrying them out. It also manifested itself in the common practice of permitting inspectors to reissue, on the next year's inspection, orders that had not been complied with, instead of cleaning them up as left-over business of the previous year, as a result of which many factory owners, particularly up-state, had come to believe that all they needed to do to avoid complying with an order was to delay till the next inspection, when it would be wiped out and reissued.

Changes have been made in the methods of factory inspection administration since the Diamond fire, however, that remove practically all the specific defects mentioned in the criticisms of the commission at that time. Each supervisor is now held responsible by the commission for securing compliance with all orders issued by the inspectors under him unless those orders are appealed, modified, or a variation granted.[12] All compliance visits previous to actual

[12] Since July 1, 1916, the first deputy commissioner, or the supervising com-

prosecution are made under his direction. The supervisor, and not the field inspector, determines when any extension of time shall be allowed for compliance with an order, and when a case shall be referred to counsel for prosecution, though, of course, he usually acts on the advice of the inspector. There is no hard and fast rule as to the number of visits that may be made before a case is reported to counsel for prosecution, but an extension of time beyond thirty days must be approved by the first deputy commissioner. The inspector reports to his supervisor on a special form every time he makes a visit without securing compliance with all the outstanding orders. These forms, on which orders already complied with and dates on which employers' promises of further compliance are recorded, go to the bureau of statistics and information to be tabulated and are then filed with the supervisor's copy of the orders, so that he has a complete record of the status of any set of orders at any time, even though the compliance sheet is in the hands of the inspector. On any promised date of compliance he notifies the inspector to make another visit.[13]

If after making a compliance visit the inspector reports that a conscientious effort is not being made to comply with an order, a "counsel's form letter" is sent out by the supervisor, without reference to counsel, which states that prosecution will be instituted unless the order is fully complied with by a given date. The inspector makes a visit on the date mentioned, and if the necessary changes have not been made, he reports to the counsel in person at his next weekly interview with that official. Unless the case is defective from a legal point of view, counsel is now expected to begin prosecution at once, or to report to the commission his reasons for not doing so.[14] All papers relating to the case are sent the counsel in a single folder by the supervising inspector, who now keeps a record of all material temporarily in the hands of the legal division.

missioner, holds monthly conferences with the supervisors, at which he has before him a record of outstanding orders in each supervising district, and each supervisor is held strictly to account for failure to secure compliance with such orders. For discussion of the method of handling appeals and petitions for variations see p. 273.

[13] The first deputy commissioner has issued orders that, beginning July 1, 1916, the general office copies of orders issued must be filed by supervising districts, and entries of all visits and action taken be made on them. Then the first deputy commissioner will likewise be able to tell from the general file the exact status of any case at any time.

[14] See "Legal Division," p. 488.

When complete compliance has been obtained, all the correspondence about the case, and the compliance sheet with the inspectors' original entries, are filed in the general file along with the office copy of the orders.[15]

While the changes sketched above seem to remove the former weaknesses in the supervision and recording of compliance visits, it is unfortunately impossible to tell exactly how much more prompt they have made compliances. This is due to the fact that up to June 30, 1916, no monthly records of outstanding orders were kept.[16] It was impossible to make a special tabulation for the purposes of this study, covering this point. However, conversations with the inspectors, and examination of a number of orders selected at random, both give the impression that the rapidity with which compliance was secured improved during the nine months closing June 30, 1916. The following table, on the number of orders issued and compliances secured in similar periods in 1914-1915 and 1915-1916, points to the same conclusion.[17] In the later period the number of compliances exceeds the number of orders, showing that a number of orders left over from the previous fiscal year were disposed of:

Subject	*Nine Months Oct. 1, 1915- June 30, 1916*		*Nine Months Oct. 1, 1914- June 30, 1915*	
	Orders Issued	Compliances Reported	Orders Issued	Compliances Reported
Administration[18]	26,393	26,412	27,231	26,146
Sanitation	32,038	31,944	31,813	26,924
Accident prevention	36,483	41,634	35,359	29,375
Fire protection	18,433	22,699	25,882	22,318
Children (16 and under)..	5	4	2	17
Women and male minors.	161	193	277	263
Miscellaneous[19]	2,886	3,003	2,722	2,177
Total	116,399	125,889	123,286	107,220

[15] For discussion as to methods of prosecution see "Legal Division," p. 486.

[16] Such records are now kept, and should be published in the monthly *Bulletin*, along with the figures on number of orders issued.

[17] Since July 1, 1916, an account has been kept of all outstanding orders issued prior to that date and all compliances with these orders secured up to the end of each month. By February 1, 1917, in addition to securing compliances with current orders, the division had reduced the number of these outstanding uncomplied orders issued prior to July 1, 1916, from 63,142 to 14,209.

[18] Includes posting notices, keeping records, reporting to labor department, and interfering with inspector.

[19] Includes payment of wages, day of rest, first aid appliances, and screens for stairs.

Subdivision of Appeals

Following the many changes of structural requirements in the labor law in 1913 and 1914, a large number of complaints and protests were received. On October 1, 1914, a special subdivision of appeals was created in the division of factory inspection to handle these matters, which was continued under the industrial commission until October 1, 1915. The number of its employees varied from time to time, but when it was abolished its staff included three factory inspectors and five clerical inspectors of various kinds, in charge of a chief factory inspector. During its existence of one year this subdivision acted on 2,793 protests, and had received nearly 5,000 appeals, approximately 90 per cent of which related to orders for fire exits.

Tagging as a Means of Securing Compliance

Tagging articles in insanitary factories "unclean" and dangerous machinery "unsafe" has proved effective as a means of securing compliance by recalcitrant employers. If on a first compliance visit the inspector finds a sanitary order or an order to guard a machine has not been obeyed, a notice is sent the owner of the factory that all articles of machinery will be tagged and their use prohibited unless the factory is immediately made clean or the hazard removed. In the nine months ending June 30, 1916, this notice of tagging alone brought about compliance in 37 per cent of the New York City "tagging" cases.[20]

In the sanitary cases, practically all of which relate to unclean floors or toilets, a sanitary order card is filled out by the inspector, and filed as required by law, which serves as a formal order from the commission to tag. An inspector and assistant visit the factory about two weeks later with this card; if the place is not clean, the inspector sometimes orders the cleaning done or started in his presence, but most often such goods, bundles and other articles are tagged "unclean" as will necessitate the stoppage of work. The tag, which is attached by a string, is actually nothing more than a means of designating articles or machinery the manufacture and use of which the commission forbids. One supervisor employs the very direct method of opening and tagging the electric switch fur-

[20] It is estimated early in 1917 that this proportion has increased to 44 per cent.

nishing current to the shop and thereby effectively stopping all machinery. The law does not expressly authorize this and it is rarely done, perhaps in twenty-five cases a year. On his return in the evening or next morning the inspector with rare exceptions finds the factory clean.

For dangerous machinery no notice or written order is required by law, but nevertheless notice is usually sent. If compliance has not occurred on his second compliance visit the inspector tags the machine. It is usually made safe within twenty-four hours thereafter, though some remain tagged as long as a week. If the machine is more than ordinarily dangerous, the supervisor states that the order is omitted and the tagging notice sent immediately.

Outside cities of the first class use of the tagging power is made to affix notices to unclean bakeries and, if work continues, to seal the ovens and tag other articles in the shop.

Increasing use of tagging as a means of summary enforcement is shown by the following figures:

Tagged	*Nine Months Oct. 1, 1915-June 30, 1916*	*Nine Months Oct. 1, 1914-June 30, 1915*
Unclean factories	357	192
Unclean bakeries	3	37
Dangerous machinery	75	16

Use of the tagging power varies greatly under various supervisors, partly because of the different conditions in their districts. The 208 cases of tagging in unclean factories in New York City for the nine months ending June 30, 1916, were distributed among the various districts as follows: No. 1, eleven; No. 2, seventy-one; No. 3, 110; No. 4, fifteen; No. 5, one.

Supervising Inspectors

The work of the supervising inspectors bears a very vital relation to the general efficiency of factory inspection. The increase in the responsibility of the supervising inspectors in relation to compliance visits and reference of violations to counsel, already mentioned, is only part of a general tendency to make them more effective units of factory inspection administration.[21]

[21] This tendency has been aided by the discontinuance of the positions of the two chief and the two assistant factory inspectors, which has concentrated administrative responsibility on the first deputy commissioner who has, in turn, placed more of it on the supervisors.

It is the duty of the supervisors not only to assign territory and work to the inspectors under them but to give technical advice to the inspectors and to building owners, contractors, employers, and others relative to compliance with the law. General rulings on special questions of interpretation of the law are made from time to time by the first deputy commissioner, but the standards applied in everyday inspection are determined to a great extent by the ability and knowledge of the supervisor. It is, therefore, very important that he spend a considerable portion of his time in the field in order that he may keep in close touch with his inspectors and with conditions in his district. One supervisor in New York City estimates that he spends an average of two hours a day in the field which would seem to be a small amount. Another averages from three to four hours a day two days a week in the field with his inspectors. Each of the supervisors has a day for the inspectors of his district to come in to confer with him, and inspectors are not supposed to report at the office at any time except on this regular day without special permission. If they encounter difficulties in their field work, they telephone their supervisor and receive advice from him in that way, unless he requests that they come in to talk over the question in person. Four out of the five supervising inspectors in New York City have factory inspectors as assistants, who spend part of their time in the field and part in the detail work of going over records.

Qualifications, Training, and Discipline of Inspectors

Chief among the weaknesses of factory inspection administration in New York state in the past has been the lack of adequate standards for qualifications, training, and discipline of the inspectors.

Inadequacy of preliminary qualifications for appointment is considered in general under "Civil Service,"[22] With special reference to factory inspectors, it need only be said here that much more thorough preparation and preliminary practical experience should be insisted upon, and that in order to attract high grade persons for this work provision should be made for larger salaries and greater certainty of financial advancement. Inspectors should be enabled to reach, by efficient service, a remuneration of at least $1,560, and those who after two years' satisfactory work demonstrate an ability

[22] See p. 507.

for special duty in assisting supervisors should be enabled to reach a salary of at least $1,980 a year.

Provision for training new inspectors is meager. Under the old labor department few conferences were held for the instruction of inspectors, and little was done to train them in technical phases of their duties. A former member of the force tells of applying repeatedly for special instruction in inspecting elevators, and having the requests ignored.

Since the industrial commission took office, all inspectors have been called into general conferences, four times in New York City and three times up-state. At these conferences technical subjects have been taken up and changes in the law explained, and the first deputy states that he expects to take up in future conferences such topics on which the inspectors need technical instruction as plumbing, lighting and ventilation. Such conferences should be held in the New York office and in each supervising district as often as once a month, if possible, and experts on important technical problems of factory inspection from outside the department should be invited to address the inspectors. In other words, the conferences should be a school of instruction.

There are other changes, however, which also need to be made before the division can reach real effectiveness in training new employees. Under the present civil service rules all appointees are supposed to be on probation for the first three months, and at the end of that time may be discharged if their "conduct, capacity, and fitness be not satisfactory." This period of probation has, in practice, been ignored. Provision for the practical training of new appointees, the essential feature of a probation period, has been neglected. The wide range of requirements included in the labor law makes it impossible for the average inspector to pass intelligently upon the difficult technical problems of factory inspection without special training after entering the service, yet newly appointed inspectors have merely been sent out with a regular inspector for from two to four weeks and then turned loose to find out the rest for themselves. Inspectors have been on several occasions advised to make use of technical books, but no plan has been developed for putting such books at their disposal. The small collection of such books in the Albany office of the commission is accessible only to those who report to that office. The manner in which inexperienced factory inspectors in this country are given full responsibility for

technical inspections is in decided contrast to the thorough methods in force in Europe, where the probation period extends from one to two years, during which careful theoretical and practical instruction is given and at the close of which a searching examination must be passed before the appointment is made permanent.[23]

Such rigid requirements of probation for factory inspectors before final appointment as are in force abroad may be impracticable at this time for New York state. The state civil service commission should be urged to lengthen the period to at least six months, but whether or not the period is lengthened a definite system of training new inspectors should be established. The supervising inspector of the district to which a new inspector is sent should be held responsible for training him in all the branches of work over which he has supervision. In each supervising district there should be two or more inspectors who will be particularly qualified to instruct new appointees in such matters as the safeguarding of machinery, buildings, construction, ventilation and sanitation, and inspection of elevators. It is important that the new inspector spend some time in one of the two main offices of the commission during his period of probation in order that he may have a better perspective of his work. It would seem almost necessary that a small technical library be maintained in the New York office, and that from time to time the attention of the inspectors be called, through bulletin board announcements or in conferences, to recent publications of particular application to their duties; during the probation period the new inspector might well be given certain assignments of reading or study. Every opportunity should be afforded him to acquire information on all questions relating to factory inspection. Incentive for improvement to the maximum possible efficiency would be greatly increased by a standard system of service records that would give recognition to specially meritorious work.[24]

Under the old labor department there was marked failure of officials to create a spirit of loyalty and diligence among the force. Shirking was common, dismissal for obvious inefficiency was almost unknown, and in some cases even drunkenness while on duty was not considered ground for discharge. Under the industrial commission the new first deputy commissioner brought up on charges certain

[23] See "European and American Methods of Training Factory Inspectors," by Herschel H. Jones, in *National Child Labor Committee Bulletin*, May, 1914.

[24] See "Civil Service," p. 512.

conspicuously inefficient members of the force and ultimately secured their discharge, in two cases for drunkenness. Several other inspectors resigned, apparently to avoid working under more strict supervision. Misconduct not warranting dismissal has been punished in a half dozen or more cases by leave of absence without pay. Gradually, but as rapidly as it can be done without working injustice to individuals, remaining incompetent inspectors should be eliminated from the force.

Monthly summaries of the daily reports of the inspectors are now prepared, both in New York City and up-state, which enable the first deputy commissioner to compare not only the work of the individual inspectors and the supervising districts in the current month, but the total progress made in the fiscal year up to the end of the current month. If any inspector appears to have lagged behind in a way which his supervisor cannot account for, he is called upon for an explanation. This closer supervision has had a highly stimulating effect on the inspectors.

Registration of Factories

Absence of a complete record of factories in the state and ignorance of the number of factories uninspected was the cause of severe criticism of the commission following the Diamond factory fire. The requirement of the law that all factories be registered with the department had not been strictly enforced since the publication of the annual directory of manufacturing establishments was discontinued in 1914. The only current source of information as to the number of factories was, therefore, the file of factory inspection reports, and this contained no record of factories not inspected within the fiscal year.

In the period of this study, however, the first deputy commissioner has taken steps to maintain a complete register. Supervising inspectors up-state are required to send in to the Albany office an index card every time a new factory or one not in operation the previous year is discovered. A notice must also be sent in to the Albany office whenever a factory is found to be closed down or vacant, and is, therefore, not inspected.

In New York City the problem of discovering newly established factories that may have escaped inspection is much more difficult. To meet this, the city has been divided into "blocks," including one or more city blocks, depending on the number of factories therein.

Cards have been prepared with space for listing every factory in each "block," and for recording any which have not been inspected, with the reason. By systematic methods of issuing those cards to inspectors and of checking them up when returned, the progress and thoroughness of the work can be closely followed. Approximately 600 factories have been assigned to each inspector. If there is doubt whether an inspector is covering his territory as rapidly as he should, it is planned to send another man over the same ground and to compare the time taken.[25]

The following summary from the monthly *Bulletin* for July, 1916,[26] gives statistics of the volume of work of the division for two similar nine months' periods before and after the establishment of the commission:

Kind of Inspection	*Nine Months Oct. 1, 1915- June 30, 1916*	*Nine Months Oct. 1, 1914- June 30, 1915*
Regular inspections	35,978	36,274
Building surveys	22,945	[27]
Special inspections	3,751	4,204
Investigations of illegal child labor	1,076	[27]
Investigations of complaints	3,583	1,741
Special investigations	7,572	[27]
Compliance visits	62,317	42,938
Prosecutions begun	1,742	566
Miscellaneous	25,393	46,713

Dividing the total number of all types of visits during the year by the number of inspectors in the division and by the number of working days, the average number of visits of all sorts made by each

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[25] This "block" system was put in operation October 1, 1916.

[26] In February, 1916, the commission began to print monthly figures on the volume of work done and prosecutions begun by each division of the bureau of inspection. The number of women found illegally employed in factories, stores, and tenements, classified by the nature of the violation, was added in the January 1917 issue. Results of prosecutions are not included. The statistics are given for the previous month and also from the beginning of the fiscal year in comparison with the same period for the year previous. This change is of obvious value to those interested in inspection work, who no longer have to wait a year or more for an annual report to learn the amount of work the bureau is doing.

[27] Included with "Miscellaneous."

inspector each day is 5.5. This figure, however, is not very significant, due to the extreme diversity in the nature and in the time consumed by the various kinds of visits.[28]

Investigation of Accidents

In spite of the great emphasis given to the possibilities of accident prevention through consolidation of workmen's compensation administration and factory inspection when the industrial commission was established, no effective cooperation has yet been developed between the workmen's compensation bureau and the division of factory inspection to facilitate investigation of the causes of accidents. Reports of accidents are now sent only to the compensation bureau, but these notices are not transmitted to the factory inspection division. Employers are no longer required to keep a yearly register of their accidents, and the factory inspector learns of accidents in his district only through the newspapers or other indirect sources. A blank form has finally been agreed upon by the heads of the two bureaus concerned for the reporting of accidents to the supervising factory inspectors, as they are received, but no use has been made of it.

In the chapter on the compensation bureau[29] it is recommended that clerks from the bureau of statistics and information be assigned to receive and tabulate the accident reports as they come into the Albany and the New York offices each morning, and that these clerks send at once to the supervising factory inspector notices of all accidents. If this were done, the supervisor might investigate any given accident himself, send a factory inspector to make a special investigation, or refer it to the inspector in whose district the place of employment was located, to be investigated in the course of his regular work, depending upon the seriousness of the accident. Not only could steps then be taken to eliminate the hazard in that particular establishment but the inspector would be

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[28] In the eight months from July 1, 1916, to February 28, 1917, inclusive, the division handled in court 1,684 cases, of which 1,337 were new. The total time spent by inspectors on these prosecutions amounted to 11,593¼ hours, equivalent to 1,656 working days, or an average of 1.2 days for each prosecution begun. In the same period the time spent in field work totaled 54,314¾ hours. In other words, about one-sixth of the inspectors' time is spent in connection with prosecutions.

[29] See p. 414.

able to recognize the danger point whenever he found it again and would be able to speak from first-hand knowledge in advising employers as to methods of safeguarding.

Labor Law Enforcement through Education and Cooperation

In the kind of safety promotion and educational work that has met with such marked success in Wisconsin and other states the New York State Department of Labor had up to the time of the establishment of the industrial commission been sadly deficient. The former industrial board had made some attempt to interest employers in cooperative efforts to improve labor conditions, but the bureau of inspection had relied largely upon the process of discovering violations of the law by repeated inspection and of haling the offenders to court if they did not comply with orders issued.

Tangible evidences of an increased interest in educational and preventive work since the industrial commission was established are the preparation for the monthly Bulletin of a practical article on "Preventing Injuries Due to Power Saws, by Their Proper Care and Use," with illustrative cuts; and the calling by the industrial commission of the first New York State Safety Congress to be held at Syracuse in December, 1916.[80] The first deputy commissioner is also assembling material for the publication of a loose-leaf safety manual with sketches of typical dangerous machines with effective safeguards attached. Early in 1916 a moving picture machine for showing safety films was secured, but so far no use had been made of it. On the whole, though the interest in the educational possibilities of factory law administration seems to have increased, the actual results secured are small. The factory inspector in his regular inspections has a great opportunity to promote shop safety organization. If properly trained he ought to be able to offer the factory manager suggestions not only for the carrying out of the labor law provisions but for the general improvement of his plant and working methods. The bureau of inspection with its 125 pairs of eyes, and presumably trained minds, searching into the 48,000 factories of the state every working day of the year, ought to be able to furnish for the general use of those factories the most stimulating and illuminating information on industrial conditions offered by any agency in this country. Instead, if the New York manufac-

[80] At this congress it was decided to hold similar meetings annually.

turer to-day wants technical advice, he generally turns to the publications of casualty insurance companies or of other private agencies or individuals. Every manufacturer in the state is entitled to the same kind of educational service from the industrial commission that the policyholders of the largest casualty insurance companies receive. By this it is not meant that the division of factory inspection should itself publish pamphlets and articles on safety and sanitation, but that it should furnish a continuous supply of information in the form of rough reports, special memoranda, etc., reflecting its first-hand observation of conditions, to the bureau of statistics and information, which, in turn, should edit and publish such material in the name, not of any one bureau, but of the industrial commission.[31] In cooperation with the bureau of statistics and information special studies of industries or particular hazards should be made by collecting the experience of every factory inspector who had to deal with that particular industry or hazard, and by supplementing this experience with such additional investigation as may be necessary.[32]

Both as a means of educating employers and of facilitating and improving the work of inspectors, codes supplementing the labor law with more detailed and definite regulations are essential. The New York factory inspector is much handicapped by lack of standards of lighting, ventilation, safeguarding machinery, general factory safety, prevention of occupational disease, and by lack of special regulations designed to meet the conditions in special industries. Guesswork has to serve for scientific standards, resulting in the maximum possibility for contention over methods of compliance and making uniformity in inspection extremely difficult. The preparation of codes by committees representing both employers and employees is, furthermore, in itself an educational step. While a reduction in the vigor with which violators are prosecuted is by no means advocated, the number of prosecutions cannot be considered a criterion of the bureau's efficiency. The real test is whether violations are reduced and conditions improved. Vigorous prosecution alone, without development of codes for special industries and special hazards and without educational and cooperative

[31] See p. 481.

[32] Detailed recommendations for educational safety pamphlets were made in the annual report of one supervising inspector for 1914, but were never acted upon.

work that reaches both employees and employers will get only limited results.

But in discussing the possibilities of labor law enforcement through the education of employers it should not be forgotten, as the need of cooperation between the division and the bureau of statistics illustrates, that the question is really a problem for the entire commission to deal with rather than the bureau of inspection alone, for the maximum results can be obtained only by the cooperative and combined effort of all the various bureaus and divisions.

Cooperation with State Fund

The advisability of combining the safety inspection work of the state fund with regular factory inspection under the bureau of inspection has frequently been discussed during the past year.[33] It is argued on one hand that the safety orders issued by the two organizations represent a duplication of work and that the observations of physical conditions in a factory by the factory inspector in his regular inspection could easily be adapted to the purpose of merit rating. On the other hand it is claimed that the state fund's inspection service to policyholders to enable them to reduce their insurance rate by improving conditions is essential for successful competition with private insurance companies who maintain large staffs of trained inspectors and engineers to advise their clients, and that the recommendations issued by the state fund are more in the nature of detailed technical instructions than the orders of the factory inspector, and cover many matters not covered by the labor law.

As long as the state fund is forced to compete with private insurance companies whose inspection service is a strong selling point, it would seem very probable that the fund might lose much more than it would save by reduction in its extremely small force of inspectors. It may well be argued that under such conditions occasional duplication of work is of minor importance. But there is little reason for the utter lack of cooperation between the two inspection forces. It would seem practicable, for example, for the state fund to have access to the records of the factory inspection division. It would seem desirable that the recommendations of the fund and the orders of the factory inspector covering the same

[33] See "Bureau of Workmen's Compensation," p. 413.

points be approximately identical even if it involves comparison of records and formal agreement on individual cases between the two officials immediately responsible. It would seem almost essential that in some manner those recommendations of the fund which are in fact recommendations for compliance with the labor law be distinguished from those which the law does not already require the employer to follow. The ideal toward which the commission should work should be the perfection of its factory inspection force to such a degree that employers will care more for the factory inspectors' advice and information than for instruction from insurance company inspectors.

Conclusions and Recommendations

In its administrative methods, which have been the chief object of study in this chapter, factory inspection has in the last few months undergone noteworthy improvement. The defects of supervision and record-keeping for which the commission was most severely criticised after the Diamond factory fire have been almost entirely eliminated. The responsibility of the supervising inspectors has been greatly increased; they are required to keep a closer check on the work of the field inspectors; and, in turn, their work is more carefully watched by the first deputy commissioner. Several incompetent officials of the bureau have been removed. Each supervisor is now held responsible by the commission for securing compliance with all orders issued by the inspectors under him unless those orders are appealed, modified, or a variation granted. All compliance visits previous to actual prosecution are now made under his direction. Any extension of time beyond the regular allowance must be determined upon by him and, if beyond thirty days, must be approved by the first deputy. Greater judgment is demanded of the supervisors in referring cases to counsel. The system of records has been improved, so that there is a more adequate check on the progress of compliance with orders and of cases referred to counsel. Steps have been taken to secure a complete register of all factories in the state and to cover by means of a block system all manufacturing establishments in New York City. A more effective method of handling complaints has been put in operation. The public is given more information as to the current progress of the bureau's work through general summaries published each month in the *Bulletin*.

The removal of jurisdiction over structural conditions in factory

buildings in New York City to local authorities will make it possible for the division to give more attention to enforcement of the child and woman labor regulations and the weekly rest day, to sanitary conditions, and to dangerous machinery. It should now be able to cover every factory at least once a year.

With due regard to the improvements in office methods and administration since the commission was established, however, factory inspection in New York state is still far from attaining the effectiveness that should be expected of it. Nothing short of establishment of high professional standards of personnel such as characterize factory inspection in Europe will make this possible. The most important problems in regard to factory inspection still confronting the commission are summarized in the following recommendations:

1. In accordance with the general recommendations made in the chapter on "Civil Service,"[34] an adequate system of promotion and salary advancement should be developed that will make it possible for the bureau to secure and hold persons with higher qualifications for factory inspection than now prevail, and advancement should be based primarily on service records. The present arbitrary salary grades should be abolished and every inspector given an opportunity to advance by gradual increments to a salary of at least $1,560 conditional only on efficient service. Those who, after at least two years' efficient service, prove themselves qualified for specialized work in assisting the supervisors should have opportunity to reach a salary of at least $1,980 a year. Rigid requirements of training and practical experience should be applied to all new appointees, and the first three months' probation period should be considered strictly a period for testing the new inspector's fitness for final appointment. A more thorough method of training inspectors on technical phases of their work should be developed, particularly for the training of new appointees.

2. Gradually, but as rapidly as is consistent with justice to individuals, persons who have proven incompetent for high grade work should be eliminated from the inspection force.

3. More effort should be devoted to educating employers and employees on accident prevention and industrial hygiene.

4. Closer cooperation with other bureaus under the commission should be developed; with the bureau of workmen's compensation in

[34] See p. 518.

the investigation of accidents; with the state fund in inspection of factories insured in the fund; with the bureau of statistics and information in the preparation and publication of educational material on accident prevention and industrial hygiene; and with the bureau of industrial code in the making and amending of codes.[35]

Division of Mercantile Inspection

Important regulations affecting mercantile establishments were first passed in New York state in 1896, but until 1908 were enforced entirely by local health boards. In that year a division of mercantile inspection was created in the department of labor, coordinate with the division of factory inspection. Shortly before the creation of the industrial commission in 1915, as a result of recommendations by the factory investigating commission, the staff of the division was increased from twelve to twenty-seven persons, and its jurisdiction was enlarged.

There have been no important changes in the general policy governing the work of the division since the commission was organized. Like the other divisions of the bureau of inspection, control of this division has been left to the member of the commission who was the head of the old labor department, and its immediate supervision has been in the hands of the first deputy commissioner.

The division is in charge of a chief inspector (salary $3,000), who was appointed early in 1916 through the civil service. For twenty years prior to his appointment he had been in the factory inspection division. Under him are twenty inspectors and six office assistants. Three of the inspectors receive $1,500 yearly and seventeen $1,200. None has been appointed since the commission took office. The training received by newly appointed inspectors consists of three or four weeks in the field with experienced members of the staff. The division has no branch offices and all of its activities are directed from New York City. Although the chief confers with the inspectors individually, general staff conferences such as those in the factory inspection division have not been held.

The cost of the division for the latest period available, the year ending September 30, 1915, only four months of which was under the industrial commission, was as follows:

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[35] See p. 317.

Salaries	$33,886.54
Traveling	6,993.44
Stationery and printing	2,799.72
Furniture and fixtures	176.40
Total	$43,856.10

Laws Enforced by the Division

As its title indicates, the division's work has to do mainly with mercantile establishments, which are defined by the labor law as "any places where goods, wares or merchandise are offered for sale." Its jurisdiction over these establishments, however, is confined to first and second class cities,[1] except for the enforcement of the one day of rest in seven law, for which it must cover all places of more than 3,000 population.

In general the division is responsible for the enforcement in mercantile establishments of the weekly rest day law and of provisions requiring sanitary conditions, good ventilation, toilet facilities, drinking water, and seats and dressing rooms for female employees. An important part of its work is the enforcement of women's daily hour laws and child labor laws in mercantile establishments. The division is supposed to enforce child labor regulations not only in stores, but in business offices, telegraph offices, restaurants, hotels, apartment houses, places of amusement, bowling alleys, and shoe-polishing establishments, and is also charged with enforcing the statutes relating to the employment of minors as messengers and newspaper carriers.

Volume of the Division's Work

The following table gives an idea of the volume of the division's work:

	Nine months ending June 30, 1916	*Year ending Sept. 30, 1915*
Inspections	26,927	29,011
Orders issued	23,884	22,339
Compliances secured	18,169	20,003
Children under 16 found employed	5,128	4,713
Found to be between 14 and 16, without requisite certificate on file	1,108	1,418
Under 14	594	726
Percentage thus illegally employed	33.2	44.5
Violations of the day of rest law detected	802	2,281
Prosecutions instituted	765	780

[1] In 1916 there were ten such cities:—Albany, Binghamton, Buffalo, New York, Rochester, Schenectady, Syracuse, Troy, Utica, and Yonkers.

In the nine months closing June 30, 1916, 763 inspections were made in 170 places outside first and second class cities in enforcing the day of rest law in mercantile establishments.[2]

About a third of the orders issued related to the condition of water closets and plumbing. Most of the others were based, in the order named, on failure to post schedules of hours, on violations of the one day of rest in seven law, and on illegal employment of women and children.

Distribution of Work among Various Types of Establishments

The major portion of the time of the division is devoted to inspection of department stores and other distinctly mercantile establishments. No special count has been kept of inspections made of restaurants and telegraph offices, but the total number of regular and special inspections made in business offices, hotels, apartment houses, bowling alleys, places of amusement, barber shops, and shoe-polishing establishments in the year ending September 30, 1914, was 1,886; in the year ending September 30, 1915, was 764, and in the nine months closing June 30, 1916, was 1,346. These represented 7.6 per cent of all inspections made in 1914, 2.6 per cent in 1915, and 5 per cent in 1916. On July 1, 1916, separate tabulation of these different kinds of inspections was discontinued, so that in the future no one will know how many such inspections are being made.

Distribution of Inspectors

Fourteen of the division's inspectors are assigned to districts in New York City and Yonkers, two to Buffalo, one each to Rochester, Syracuse, Utica, and Binghamton, and one covers Albany, Troy, and Schenectady. Each inspector is kept in the area assigned to him, except for occasional inspections during the summer to enforce the day of rest law which as has been previously stated are the only inspections made outside first and second class cities. In the spring of 1916, also, one man was assigned to spend practically all his time on this class of work. City officials in the smaller places are not at all active in regulating mercantile establishments, and if the division's force could be sufficiently increased, its jurisdiction ought to be extended to cover all parts of the state.

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[2] During the summer of 1916, 1,818 such inspections were made.

Selection of Establishments to Be Inspected

Inspections of mercantile establishments made by the bureau are classed as "routine" or "special." Special inspections are made on receipt of complaints as to illegal practices in certain stores. During the nine months from October 1, 1915, to June 30, 1916, 1,167 complaints were received. Sixty-four per cent of these were anonymous, and 55 per cent were not substantiated by the subsequent inspections. About one-third of them related to violations of the day of rest law, and another one-third to the employment of females for illegal hours. About 450 anonymous complaints, many of which were signed "Committee," purported to come from employees.

When a complaint is received, it is entered on an investigation card which is given to an inspector. A carbon copy of this card is kept in a special file of pending assignments until the matter has been investigated and disposed of. An inspector visits the premises within ten days. But experience shows that little would be accomplished if the division depended on complaints to detect violations of the law. When a certain inspector was sick for many consecutive weeks, for instance, it was found that although the practices of the mercantile establishments in his district became noticeably lax, the number of complaints from employees did not substantially increase.

Consequently a complete inspection of the field, establishment by establishment, is requisite to a satisfactory enforcement of the law. Such routine inspections comprise the bulk of the division's work, and each inspector makes from ten to fifteen of them daily. The chief mercantile inspector states, however, that if his entire force worked in New York City alone, it could not complete one routine inspection of each mercantile establishment there in a year's time. As a result the division has adopted the policy of limiting its inspections largely to establishments which conduct some or all of their business on the ground floor. The time and arrangement of these routine inspections are almost entirely left to the individual inspectors within their own districts. The division keeps no maps or geographical lists to show the times and places of these inspections, and no attempt is made to keep a unified roster of the mercantile or other establishments subject to the division's jurisdiction. In order to find out the complete record of any particular establishment it is necessary to consult at least six different files, so that if an establish-

ment is a frequent violator, the fact does not automatically become conspicuous. The division should follow the example of the factory inspection division and adopt some form of "block system"[3] by which all mercantile establishments would be methodically listed and visited. For this purpose, also, an augmented force would be necessary. It would be advisable to start a new file, containing a card for each establishment under its jurisdiction. On each card should be indicated the date of inspections and reinspections, violations found, and prosecutions.

Method of Inspecting Mercantile Establishments

In inspecting a mercantile establishment the inspector goes first to the posted abstract of laws[4] and stamps his name and the date on its margin. The posters thus serve as records of inspections. If the establishment does business on Sunday, the day of rest of each employee should be found posted at the same place. If the inspection is made on Tuesday, for instance, and the schedule of days of rest shows that certain employees do not work Tuesday, the inspector then ascertains whether or not they are actually working. Also posted at the same place should be a statement of the hours of labor of all children under the age of sixteen years, and of all females who are employed in the establishment. The inspector selects at random certain women and children, with whom he discusses the hours which they work in order to ascertain whether the posted hours are being complied with. The inspector also interviews employees who appear to be less than sixteen years old, and if any of them are between the ages of fourteen and sixteen, he ascertains whether the establishment has on file a certificate issued by the board of health. The inspector then makes a general tour of the premises, looking for any insanitary condition, and pays special attention to wash-basins and to toilet rooms. If over six women are employed, he also investigates the provision of dressing rooms, couches, and seats. While the larger employers have been educated through their associations regarding the laws affecting mercantile establishments, sufficient efforts have not been made to reach the smaller, unorganized merchants. For this purpose, a pamphlet for distribution

[3] See p. 344.

[4] Each establishment is in practice required to post only one copy of the abstract of laws, although the law provides that one copy shall be posted on each floor.

among employers summarizing and explaining the law in languages that they can understand would be useful.

Times When Inspections Are Made

Nearly all inspections are made between 9 A. M. and 5 P. M. in the usual working hours of the department. If the division is to enforce the day of rest law with any degree of thoroughness, however, it must make some Sunday inspections. Yet before July 1, 1916, the division had not made definite Sunday assignments for routine inspections, and each inspector was permitted to determine for himself how much Sunday work he should do.[5] In connection with this study a tabulation was made covering the work of all inspectors during a nine months period. This developed the fact that on the average each inspector worked only six Sundays a year.[6] If the law concerning working hours for children is to be enforced, inspections must be made before 8 o'clock in the morning and after 6 o'clock in the evening; and if the law concerning working hours for females is to be enforced inspections must be made before 7 o'clock in the morning and after 10 o'clock at night. Inspections at these times involve a sacrifice of personal comfort by the inspectors, for which they receive no additional compensation. Except for assignments for investigating specific complaints, it has been left entirely to the individual inspector's discretion to determine whether he should do any of this work. No reports have been rendered or records kept of the amount of time spent in the field by inspectors during these out-of-hour periods.[7]

Practically no effort is made to enforce the provisions of the law relating to messenger boys and newspaper carriers, or to supervise the employment of children who deliver milk and rolls in the early

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[5] No extra compensation is given on account of Sunday work, but any inspector who works on Sunday may substitute as his holiday any other day in the week following.

[6] Subsequently, the division has undertaken a state-wide inspection of mercantile establishments on Sunday, and at the time of writing the inspectors are working on an average nearly three Sundays out of every four.

[7] Beginning July 1, 1916, a space has been added to the inspectors' daily report form, in which time spent in the field before 9 A. M. and after 5 P. M., is to be indicated. The first 242 daily reports on these cards contained only thirty-two such entries. This situation has been somewhat improved as a result of the facts developed by this study.

morning, which would also necessitate inspections outside the usual working hours and an addition of several inspectors to the force. No figures in regard to these cases are kept by the division.

Record Keeping and "Follow Up" System

After making either a routine or a special investigation, an inspector fills out a regular "mercantile inspection" form, on the reverse side of which he indicates any orders which he finds should be issued against an establishment to make it conform to the law. A form letter containing these orders is then sent to the establishment. One carbon copy is kept in a special file of uncomplied orders until the establishment has done as directed; a second copy is given to the same inspector on a so-called compliance form. Within ten days he reinspects the premises, indicates their condition on the compliance form, and returns it to the office. If it does not show compliance, an extension of time is granted if a desire to comply is evident; otherwise the division sends the establishment a letter which bears the signature of the first assistant counsel of the labor department, and which states that since the party addressed has failed to comply with the orders issued, although ample time has been allowed for compliance, legal proceedings will be instituted to enforce the penalties prescribed in the penal law unless compliance is fully established before a certain date. At the date set, the inspector is again assigned to visit the premises, and if the establishment has not complied the case is referred to the legal division for prosecution. Whenever an inspector finds a violation of the provisions relating to child labor or to hours, he makes out, regardless of what other reports he may render in connection with the same inspection, a special card setting forth the essential information regarding the violation. At the close of each day's work, each inspector renders a daily summary upon a form which indicates in considerable detail the nature of each inspection which he has made during the day, the distribution of his time among various classes of work, and his expenses. The division furnishes to all establishments which it inspects a poster, measuring about 11 x 17 inches, which contains under a conspicuous heading a clearly worded abstract of the laws which it is the division's duty to enforce. The division prepares no form for the schedule of employees' days of rest for the use of mercantile establishments which do business on Sunday. As a result, illegible and misleading notices

written on scraps of paper are often found. The chief mercantile inspector has recommended that the division supply forms, but as yet there has been no action on the matter.

Prosecutions

No matter is referred to the legal division until the inspector who reported it has discussed it with the chief inspector. If the chief inspector believes that a legal proceeding should be instituted, he stamps the report card "referred to counsel." Responsibility then rests with the counsel for bringing prosecution or submitting to the commission his reasons for not doing so. Before the case is abandoned, the chief mercantile inspector is given an opportunity to object at a meeting of the industrial commission, and the final decision to abandon a case is always made by the commission. Almost all of the prosecutions relate to violations of the day of rest law or to illegal employment of women and children. In 1915, out of 780 prosecutions only thirty-four were dismissed by magistrates; four were withdrawn; and seven defendants secured jury acquittals. Fines amounting to $5,502 were imposed. The largest number of actions were brought against grocery and the next largest against confectionery stores.

Conclusions and Recommendations

The division of mercantile inspection appears on the whole to be doing effective work wherever inspections are made. Orders are issued when required, and compliance visits are prompt. The number of Sunday inspections, necessary in enforcing the one day of rest in seven law, is rapidly increasing, though the number of early morning and late evening inspections, equally necessary in connection with the limitation of the hours of women and children, is still too few. But the division has not enough inspectors even to cover adequately the mercantile establishments under its jurisdiction, much less the various other kinds of establishments in which it is supposed to enforce child labor restrictions. There is no complete central record of all the establishments under the jurisdiction of the division, making it necessary to consult at least six different files to obtain the record of any one establishment. Sufficient efforts have not been made to give the small and unorganized employers a better understanding of the law. It is therefore recommended:

1. The number of inspectors in the division should be at least doubled.

2. With an enlarged force of inspectors the division should undertake the enforcement of laws with which it is charged relating to business offices, telegraph offices, restaurants, hotels, apartment houses, amusement places, bowling alleys, barber shops, shoe-polishing establishments, and the employment of messengers and newspaper carriers, should adopt a "block system" similar to that in use in the division of factory inspection, and should systematically list and inspect all establishments under its jurisdiction in each "block."

3. The division should make more frequent early morning, late evening, and Sunday inspections.

4. The division should begin a new file containing a card for each establishment under its jurisdiction. Each card should contain a record of inspections, reinspections, violations, and prosecutions for that establishment.

5. A pamphlet in languages that they can understand should be prepared for distribution among mercantile employers, containing an explanation of the laws affecting their establishments and the best methods of compliance.

Division of Home Work Inspection

Home work was defined by the New York Factory Investigating Commission as "any kind of manufacturing done for a manufacturer, contractor, or agent by persons not working on the premises or under supervision, the . . . rates of payment for these workers being fixed by the persons giving out the work." Though contrary to the general tendency of modern industry away from the home into the factory, there are many processes involving slight skill and little or no special equipment in which, wherever cheap labor may be obtained and the material easily transported, the saving in factory space and equipment makes home work profitable to the manufacturer. Home work has been found to exist in New York state in connection with the manufacture of over a hundred different commodities. The bulk of home work is done, however, on clothing, artificial flowers, and embroidery. Among New York home workers those of Italian and Jewish birth predominate.

The evils of home work escape the ordinary regulations applying to woman and child labor and to sanitation in factories, and require special laws with special inspection for their enforcement.

Historical Summary of Home Work Regulation in New York State

New York state has made such special regulations since 1883. The method of prohibition was first tried, and the manufacture of tobacco products in dwellings was forbidden. This law was declared unconstitutional by the court of appeals on the ground that the title was misleading.[1] In the following year a similar but more stringent act was passed, which in 1885, in the well known Jacobs case, was also declared an unconstitutional infringement of the cigar maker's liberty in that it sought to force him "from his home and its hallowed associations and beneficent influences, to ply his trade elsewhere."[2] A different form of attack thus became necessary, and beginning in 1892 a licensing system was developed which still continues the basis of the law on home work. The present detailed statutes are evidence of the difficulties of making adequate and enforceable regulations on the subject. Tenements where the work is done are licensed and the employers who wish to give out home work must secure permits.

Responsibility for violations may fall on employer, tenement owner, and worker. With the exception of the child labor provisions the standards set are mainly sanitary, designed in large part to protect the consumer. In addition to the licensing system, in 1913, when the law was extensively amended, the method of prohibition was again tried. Home work on a limited number of articles, whose manufacture under insanitary conditions is especially dangerous to the consumer, was forbidden. This prohibition was upheld by a lower court in 1915[3] and no appeal to a higher jurisdiction was taken, so that it was in force in the summer and autumn of 1916, when this study was made.

Organization of Division of Home Work Inspection

In 1913 the enforcement of the law relating to manufacturing in tenement houses was put into the hands of a separate division of home work inspection in the bureau of inspection. The organization of the division was not affected when the industrial commission took over the bureau of inspection. Like the other divisions of the

[1] *In re* Paul, 94 N. Y. 497 (1884).
[2] *In re* Jacobs, 98 N. Y. 98 (1885).
[3] People *v.* Balofsky, 167 App. Div. 913, 151 N. Y. Supp. 1135 (1915).

bureau of inspection it is under the general supervision of the first deputy commissioner, who in turn is responsible to the commissioner supervising the bureau. Matters relating to the home work division reach the whole commission only through this channel. The total office and field force of the division consists of eighteen persons. The administrative head of the division is a chief (salary $3,000), who has been in the department since 1899, and who has assisting him in the office a factory inspector transferred from the field (salary $1,500), a clerk, and two stenographers. The field force is composed of eleven women and two men inspectors, two of whom get $1,500 a year and the rest $1,200. The division has no district offices, and except for special assignments the inspection force is entirely concentrated in New York City.

The latest figures available on the annual cost of the division cover the year ending September 30, 1915, most of which was before the creation of the commission. Not including rent, postage, and other general charges, the figures are as follows:

Salaries	$23,050.00
Traveling	4,406.20
Stationery and printing	677.30
Furniture and fixtures	87.45
Total	$28,220.95

Each inspector receives 60 cents for lunch daily.[4]

Work of the Division

The requirements of the law cause the work of the division to fall into several distinct parts, including the issuance of licenses to tenements for home work therein, the granting of permits to factory owners to employ home workers, the inspection of licensed tenements, and the investigation of unlicensed tenements where home work is suspected.

The following figures summarize the work of the division for the nine months ending June 30, 1916, compared with the same months of the preceding year, all but one of which were before the commission took charge:[5]

[4] For the fiscal year 1916-1917, the salary appropriation was reduced to $21,900, and the services of one inspector and two stenographers were not provided for.

[5] Monthly *Bulletin*, New York Industrial Commission, July, 1916, p. 40.

	Nine months Oct. 1, 1915- June 30, 1916	*Nine months Oct. 1, 1914- June 30, 1915*
Inspections of licensed buildings	14,719	13,752
Inspections of workshops in tenement houses	385	295
Investigations of applications for license	2,196	2,211
Observations	1,913	2,289
Investigations of complaints	385	151
Investigations of illegal child labor	311	...[6]
Compliance visits	3,847	2,292
Miscellaneous matters[7]	4,459	6,330
Tenement licenses:		
Issued	2,023	2,062
Cancelled or revoked	1,549	979
Outstanding at end of period	14,846	13,944
Factory permits:		
Issued	443	820
Cancelled or revoked	272	43
Outstanding at end of period	2,329	2,149
Registers of outside workers:		
Notifications issued	2,336	1,655
Registers received	1,459	1,631

It will be noticed that the total number of violations found is not tabulated. There seem to have been twenty-eight prosecutions during the latter period in comparison with seven in the year ending September 30, 1915, all of which were brought by one inspector, and twenty-nine in 1913-1914.

Licensing of Tenements

The law provides that every tenement in which manufacturing is carried on must be licensed. Licenses are to be issued only to houses found upon inspection to be in good sanitary condition, and after the records of the local health board and tenement house department have been consulted to see that no cases of contagious disease or uncorrected sanitary violations exist. A record of the inspection and examination of these other records must be filed. When issued the license applies to the entire tenement and not to special apartments or workers. The law covers all forms of work except the making of washable collars, cuffs, shirts, and shirtwaists, and applies to all buildings housing three or more independent fami-

[6] Included with "Miscellaneous matters."

[7] "Miscellaneous matters" include such actions as visits of inspectors to employers and to tenement owners and agents.

lies, together with any shop on the same lot as a tenement where home work is done. One and two-family dwellings are not included, however. The New York Factory Investigating Commission found that much home work went on up-state in these dwellings, often under undesirable conditions. Its recommendation that all such dwellings be brought under the law is seconded by the chief of the division. The work may be carried on only by tenants in their own apartments, except that, by special permit, outside persons may work at custom dressmaking in especially large and sanitary apartments on the first and second floors. Licenses are to be revoked if the tenement becomes insanitary, if the child labor law is violated, or if the owner fails to comply within ten days with any order of the division.

The issuance of licenses is a matter coming under the personal supervision of the chief of the division. In June, 1916, there were in the state 14,676 licensed tenement houses, only 400 of which were outside the five boroughs of Greater New York. In the nine months ending June 30, 1916, 2,196 applications for licenses were investigated, and 2,023 licenses were issued. Applications are made by the owner either voluntarily or following the discovery of home work in an unlicensed tenement and notification of the owner to apply for a license. The records of the division do not show how many applications belong to each of these two classes. When home work is found to be going on in an unlicensed tenement for which no license has been asked, the inspector tags the goods and notifies the owner to apply for a license. If a license has been asked for, the division does not stop the work, as the letter of the law requires, but sends the workers a "temporary permit" written on the back of the business card of the chief of the division. This is good for ten days, the interval generally required for the granting of a license. No matter how the application is made, the subsequent procedure is the same; the tenement is visited and if found sanitary, as seems nearly always to be the case, the license is granted. Formerly the division consulted the records of the department of health and the tenement house department before issuing new licenses, but since January 1, 1915, this has not been done. There seems to be no good reason why such cooperation, which is required by law, should be discontinued. Besides furnishing an additional precaution against the dangers of disease, careful examination of these records might save a number of visits of inspection.

Nor are the provisions for the revocation of licenses enforced. It is the stated policy of the division rarely to revoke licenses, since these apply to the entire building and many persons may be deprived of work because of the fault of one or two. For instance, during the four months of July, August, September, and October, 1916, but nine licenses were revoked for causes other than the presence of infantile paralysis in the building, although during the same period there were found many times that number of violations of the home work laws. When "custom work" (that is, work not done for a contractor or factory owner, but directly for the consumer) is done in unlicensed tenements, the chief of the division does not require the owner to secure a license. He states that he desires to narrow the field of work of the division as much as possible in order that the present staff of inspectors may be able to cover it, and he considers home work of this character to be the least serious violation. In the nine months ending June 30, 1916, the statistics of the division combined the number of licenses revoked with the number cancelled for non-use of premises, so that the number of revocations among the 1,549 cancellations cannot be determined.[8] To inspire respect for the licensing system, a stricter enforcement, corresponding to the provisions of the law, is called for. The division should also test in the courts the responsibility of tenement owners for illegal home work. If the law is faulty the commission should submit the necessary amendment to the legislature.

Factory Permits

According to the law employers who give out home work must also obtain a permit, which may be revoked if illegal home work is allowed. They must find out from the division that the tenements to which they send work are licensed and from the board of health that no contagious disease exists in apartments. They must furthermore keep a register of the names and addresses of all home workers.

The granting of factory permits, like the issuance of licenses, is under the personal supervision of the chief of the division. In June, 1916, there were outstanding 2,260 such permits, 199 of which cov-

[8] In previous years the figures for these two classes of cancellations were separated. Thus in the year ending September 30, 1914, 2,149 licenses were cancelled and eighty-seven were revoked. As a result of this study the chief of the division plans to resume his former practice and make this separation in the forthcoming annual report for the year ending June 30, 1916.

ered factories outside New York City. Four hundred and forty-three new permits were issued in the nine months ending June 30, 1916. The division receives some names of employers who give out home work from the division of factory inspection, whose regular report cards contain a special space for this item.

The provisions for the revocation of factory permits are as much a dead letter as those for the revocation of tenement licenses. The chief of the division states that it is his policy never to revoke permits in penalty for violations of the law inasmuch as such procedure would withdraw work from many innocent persons. When goods from employers without permits are found in the course of inspection, the employers are notified to apply for permits. As with licenses, the statistics for the nine months ending June 30, 1916, combine the number of permits revoked with those cancelled for non-use, so that there is no way of ascertaining the number of permits revoked out of the 272 cancellations during that period.[9]

During the same period the division notified 2,336 employers who had applied for permits to file registers of home workers. About two-thirds of them obeyed.[10] No steps are taken to see that manufacturers consult the board of health for the addresses of cases of contagious disease as the law requires. In 1912 the factory investigating commission found that few manufacturers made any efforts to look up home conditions before giving out work and that 80 per cent of the names and addresses of home workers given its investigators by manufacturers were incorrect.[11] There is no evidence that the division has tried to secure a change in this respect.

It is therefore evident that great laxity exists in enforcing the provisions of the law regarding factory permits and registers as well as those regarding tenement licenses. More effective measures should be taken for finding out what employers give out home work. Newspaper advertisements for home workers might be followed up. Employers should be prosecuted for failure to secure factory permits and to file registers. If the law is so weak that successful prosecu-

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[9] In the year ending September 30, 1914, only three permits were revoked.

[10] Until September, 1916, the division did not deem it advisable to prosecute employers for failure to file such registers, but at that time the division turned over three such cases to the legal bureau for prosecution if the evidence proved sufficient.

[11] *Second Report of the New York State Factory Investigating Commission*, Vol. I, p. 101.

tions cannot be made, the commission should propose definite amendments as early as possible; but it should be fairly tested first. Preliminary to more rigid enforcement, conferences with employers of home workers would very likely secure greater cooperation in carrying out the provisions of the law.

Inspection of Licensed Tenements

The principal work of the division is the inspection of licensed tenements. The definition of "tenant factory"[12] in the labor law sometimes also applies to tenement houses. In all such cases the inspection is made by the staff of the home work division. The law provides that such inspections shall be made at least once every six months. The chief of the division states, however, that each licensed tenement is inspected about once a year. This estimate is confirmed by the fact that there were on September 30, 1916, a total of 14,365 licensed tenements and that during the preceding year 14,512 inspections of such tenements had been made. The chief says that with six more inspectors he could make semi-annual inspections and for several years he has asked for this addition to his force. Until at least this number of inspectors is added, the division cannot be held entirely responsible for complete enforcement of the law. Commencing anew with each fiscal year, the force tries to cover all the licensed tenements in New York City, starting with the most congested areas. Each inspector is assigned to given areas, but the state is not divided into inspection districts. Outside New York City no periodic inspections are made. The chief of the division states that he always endeavors to cooperate with public and private agencies that inform him of illegal manufacture, and that he has special inspections or investigations made whenever such information is received.

According to the law the chief illegal conditions for which a home work inspector must look in his visits to licensed tenements are bad sanitation, cases of disease, child labor, and work on dolls, dolls' clothing, infants' and children's clothing, and articles of food. Inspectors must also see that all goods are labeled with the manufacturers' names and addresses. These requirements may be enforced

[12] "A building, separate parts of which are occupied and used by different persons . . . and one or more of which parts is so used as to constitute in law a factory."

by several different methods. Tenants may be required to clean dirty apartments and owners may be ordered to remedy insanitary conditions and given ten days to stop unlawful manufacture. The inspector may affix to the door of an "habitually filthy" apartment a placard stating the facts and forbidding manufacture therein. As a protection owners have the power of dispossessing tenants who do illegal home work. Goods made contrary to law may be tagged "Tenement made," as a notice that their sale is illegal, or may be seized and held until cleansed. If the owner does not make arrangements for cleansing within a month, they may be destroyed. All cases of disease in home workers' apartments must be reported to the local board of health, and the goods must be tagged. The health board must visit within two days all apartments in which the home work division reports contagious disease and may disinfect or destroy infected or unclean goods.

In practice the procedure of a home work inspector is somewhat as follows. He carries with him a monthly bulletin containing a list of the licenses for July, the beginning of the fiscal year; and as each licensed tenement is inspected, he crosses the number of the tenement from the list. On entering a licensed tenement he first sees the janitress and finds out from her the location of tenants who do home work. He then inspects the house, apartment by apartment, beginning usually with the first floor. If the neighbors say that a locked apartment is vacant or that the inmates have left for the day, the inspector does not attempt to enter. Some inspectors investigate the cellars of the tenements, while other inspectors merely look into them from outside. Inspectors investigate the roof of the tenement for cleanliness whenever it is easy of access, but not usually when it is gained only by climbing a ladder or a fire escape. In many cases the persons visited cannot speak English, and the children must be used as interpreters. In making additions to the inspecting staff of the division it would be desirable to secure persons who could speak Italian and Jewish.

When an inspector enters an apartment he first looks for the forbidden varieties of home work and the illegal employment of children. If goods whose manufacture is forbidden in tenements are found, they are tagged unless they are almost completed. In the latter case no action is taken on the ground that it would be inflicting undue hardship. Efforts to remove from tenements prohibited

materials upon which work was being done have frequently been unsuccessful. Prosecution is brought in the most flagrant cases where employer and worker have both been warned several times and have refused to comply with the law. In the nine months ending June 30, 1916, eight employers were prosecuted for giving out illegal materials. Six of them received suspended sentences and two were fined $20 each. The law has been upheld in the lower courts, and no appeal to a higher court has yet been taken. An effort should be made to get a binding decision on this law, which if sustained, should be more vigorously enforced.

The inspectors have found it very difficult to run down cases of illegal child labor in the home. If a child is found with unfinished goods in her lap or with a needle in her hand, she will invariably assert that she is not working, and it is difficult for the inspector to prove the contrary.[13] When a child is actually caught working illegally, the policy of the division is to remove the goods from the mother rather than to penalize the owner of the tenement or the employer, though in the nine months ending June 30, 1916, one employer was fined $50 for employing a child under fourteen. The division does not believe that persons allowing children to work with them can be prosecuted. The inspector sends a special card for the violation to the division office and the owner is then ordered to take the goods away. The inspector does not tag the goods, but makes a visit on the following day to see that the employer has obeyed orders. On a first offense the employer is permitted to return the goods if the mother makes an affidavit at the office of the division that she will not allow her children to work. On any subsequent offenses the removal of goods is supposed to be final. Much information concerning illegal child labor has been given the division by various child protective agencies. Some of these, however, have ceased to refer many cases of illegal child labor in tenements because the division takes the position that it is inadvisable to prosecute such cases. During the past two years the division has not sent to the attendance bureau of the New York City Board of Education any names of children found working in tenements.

[13] Often when an inspector enters a room on a lower floor a child will softly depart. When the inspector reaches an apartment on a higher floor of the tenement he will find no children working, though materials are lying all over the floor and several children are sitting around the room. The apartment has evidently been warned by the child from below.

Under this policy it does not appear that illegal child labor in tenement home work is decreasing. Reinspections where goods have been once removed and returned show that the children continue at work. During the fiscal year ending September 30, 1915, 444 children under sixteen years of age were found illegally employed in home work, while in the shorter subsequent period of nine months between October 1, 1915, and June 30, 1916, 471 such cases were found.[14]

Three-quarters of the cases were in Manhattan, and all the rest were in Brooklyn or the Bronx. The number of cases in Manhattan remained about the same in the later period, but the Brooklyn cases rose from fifty to 119. Over three-quarters of these children were girls. Among the child home workers found in the nine months ending June 30, 1916, ninety-nine were under ten years of age, and four were but three years old. Eleven of these small children were working on materials on which all tenement home work is forbidden.

Until an amendment to the present law is secured, holding tenants responsible for the illegal employment of children, the deterrent effect of removing goods permanently on a first offense might well be tried. Some hardship to individuals might be caused, but against this should be balanced the harm done the children by illegal work and the increased respect for law and improvement in conditions which would be likely to follow. Cases of need should be referred to the proper charitable societies.

Inspectors always endeavor to learn the name of the owner of the goods on which home work is being done. Few employers attach their label, as required by law, to all materials given out; but most employers give to the home workers their business cards; the possession of such a card by the worker is regarded by the division as compliance with the law. Often the home worker is unable to give the name of the employer. In such cases the inspector sends a child to find out who the employer is, or tries to learn his identity from the neighbors. Only when it is impossible to find out the name of the employer in any way are the goods tagged. The enforcement of this provision also appears to be unnecessarily lax.

[14] These figures are drawn from tables relating to child labor in home work prepared by the bureau of statistics and information of the department, at the request of the Bureau of Municipal Research. Previous to this tabulation no statistics had been prepared relative to cases of child labor in tenement work.

The largest part of the duty of a home work inspector seems to consist in attention to sanitary conditions. He examines the state of the plumbing and water pipes. He spends much time in what is really education in the principles of sanitary housekeeping. When the inspector finds a dirty apartment, he endeavors to induce the tenant to clean up by threatening to take away the work and by pointing out the advantages of keeping a clean house. In case the tenant shows no willingness to clean up, the inspector sends an order to the owner of the tenement, who is legally responsible for its condition. If the halls or toilets are dirty, the inspector endeavors to induce the housekeeper or the tenants to clean up. If the walls of the hallways require scrubbing, or if the inspector thinks repairs should be made, an order is also sent to the owner, but if the latter explains that he intends to make extensive repairs within the next few months no attempt is made to enforce the order. The chief of the division asserts that during his seventeen years of service the home work inspectors have done much to clean up the apartments in the poorer sections of the city of New York.

The division has no fixed standard of cleanliness for tenants, and some inspectors require the cleaning up of apartments and halls that are in a condition which other inspectors would not consider insanitary. A series of conferences between the chief of the division, the inspectors, and the large owners of tenement properties in neighborhoods where much home work is done would serve to work out practical and uniform standards of cleanliness and would also give owners a better understanding of the work of the division, which might, in some cases, result in their active cooperation in preventing illegal home work.

It is not the policy of the division to revoke the license of insanitary tenements or of those in which the owner does not comply with orders within ten days. From October 1, 1915, to June 30, 1916, the division issued fifty-one sets of formal orders to owners of tenements, all located in Manhattan or the Bronx. Compliance visits on these orders were made in June, 1916, at which time forty-two had been complied with and nine had not. In forty cases out of the fifty-one the compliance visit did not take place until at least six months after the issuance of the order. If permanent improvement in sanitary conditions is to be secured, more frequent and stringent orders should be issued to owners, and compliance visits should be

made much more promptly. If the orders are not obeyed, the license should be revoked without further delay. In New York City cooperation with the tenement house department would probably be helpful.[15]

As the inspector proceeds from the first to the top floor of the tenement he often finds the upstairs tenants cleaning their apartments. In the wake of each inspector there is usually a great stir of house cleaning. If the apartment is very dirty, the inspector tags the goods.[16] The law apparently intended to prevent the removal or sale of tenement made goods by the tagging system, but it is often found that tagged goods disappear. Removal seems to be a surer method of enforcement. When the owner of the goods cannot be ascertained, they are removed to the office of the division, where he may obtain them. Such tagging or removal of goods is especially obnoxious to the workers, and several times inspectors have been attacked when enforcing the law in this manner. One inspector, who was removing goods from a tenement, was set upon by angry workers and disabled for six months. The inspectors do not utilize their power to placard "habitually filthy" apartments, which might be a useful deterrent to illegal work.

In order to prevent the sale of infected or unclean materials, the law, as previously stated, requires that all cases of disease found by home work inspectors be reported to the boards of health. Due, it is said, to the objections of the health boards to investigating cases of disease which are not infectious, the method has arisen of reporting only those which the inspector, although he has no medical training, is sure belong to this class. During the nine months ending June 30, 1916, the inspectors notified the department of health of eleven such cases. No comparison can be made with previous periods, since the number of such notices has never before been tabulated. Notification is made not on the cards furnished by the health department for the reporting of preventable diseases, but by telephone. In cases where the health department is notified or where it

[15] The division does not know whether the landlords exercise their right of dispossessing tenants doing illegal home work, but believes that they do not.

[16] Each inspector carries about ten tags during his regular inspections. These may be affixed by means of string to illegal home work. The tag is slightly smaller than the ordinary trunk tag; it bears the words "Tenement made," and a warning that the tag must not be removed or defaced.

has already placarded the apartment for contagious disease, the goods are tagged,[17] and are removed and disinfected by the health department and then returned to the employer. However, as a further means of preventing home work in apartments where contagious disease exists the division makes use of the daily summary of contagious diseases issued by the New York City Department of Health. The summary is received regularly and a special inspection is made of any tenements on this list which also appear on the list of licensed tenements. In all other cases of illness, no action is taken, even in such extreme instances as when women hold in their arms, as they work on wearing apparel, babies with erupted faces or with skin and scalp diseases. If the health of the consumer is to be properly protected all cases of disease should be reported, as the law requires, and in general more effective cooperation with boards of health should be sought.

Investigation of Unlicensed Tenements

The remaining task of the home work inspectors is the investigation of unlicensed tenements in which there is reason to believe that manufacturing often goes on. For instance the New York Factory Investigating Commission found that of 124 home workers whose names were given them by brush manufacturers, 114 lived in unlicensed houses. The chief of the home work division himself states that much home work is carried on in unlicensed tenements outside New York, but that his small inspection force does not permit him to enforce the law in the up-state districts. The long desired increase in his force would facilitate such enforcement. In New York City such investigations are often made at the suggestion of social workers or interested persons and agencies. When the registers of home workers sent in by the employers contain the addresses of unlicensed houses, such houses are investigated. The division has never made any systematic house-to-house canvass to find unlicensed tenements. Every year the division covers two or three new up-state towns, and endeavors to bring all the home work in these towns un-

[17] During the outbreak of poliomyelitis in the summer of 1916 the division adopted the policy of tagging all goods made anywhere in tenement houses in which cases of disease were reported. However, the city department of health refused to disinfect any goods except those manufactured in the apartment where the person affected with the disease lived. Then the division decided to cancel all licenses of infected tenements.

der the licensing system, but many places have never been covered.[18]

According to the chief of the division, during the nine months ending June 30, 1916, some 497 cases of work in unlicensed tenements were found in the course of 1,913 inspections.[19] As already described,[20] when home work is found to be conducted in an unlicensed tenement for which a license has been asked the workers are given a "temporary permit," but if no license has been asked the goods are tagged and the owner is notified to apply for a license. If the owner does not apply, any employer who persists in sending goods there may be prosecuted. But such prosecutions are infrequent. Only nineteen are recorded for the nine months ending June 30, 1916, and in thirteen of these cases a suspended sentence was given. Five employers were fined $20 each and one was acquitted. Here again, a policy of stricter enforcement and more frequent prosecutions might well inspire more respect for the division and its work.

In addition to their inspections of tenements, when children are found illegally employed, when employers without permits give out home work, or when employers with permits give out work to unlicensed tenements, the inspectors often go to the factories of the employers to hold personal conferences. The employers, it is said, frequently attempt to escape responsibility by pretending they are subordinates and that the real employer is in the country or in another city. But on the other hand it is not uncommon for employers to express willingness to remove goods from tenements where children are illegally employed and to commend the division for its effort to improve the conditions of home work. This attitude is an additional argument for the recommendation of conferences between tenement house owners, employers, and the division on the various provisions of the law.

Each home work inspector records his work by means of a daily summary, practically identical with that used by the factory inspection division. This is filed in the division office for two months, and is then sent to the bureau of statistics and information at Albany.

[18] Some of the cities which have not been covered are Auburn, Batavia, Binghamton, Canandaigua, Elmira, Ithaca, Poughkeepsie, Schenectady, Watertown, and Yonkers.

[19] These figures are of doubtful accuracy, however, since they differ by 500 from those in the same record as kept by the chief's clerk.

[20] See p. 364.

An analysis of these summaries during the nine months ending June 30, 1916, shows that nearly all the inspections are made within the regular working hours of the department, that is between 9 A. M. and 5 P. M. Child labor cases are occasionally investigated before or after hours or on Sundays. During the nine months, work at these times amounting to an average of eight hours monthly was performed by nine inspectors out of the total force of thirteen. An increase in evening and Sunday inspections—which should be made up for by corresponding rest periods during regular hours—would be especially effective in detecting illegal child labor.

Conclusions and Recommendations

In any judgment on the work of the division of home work inspection, full allowance should be made for the tremendous difficulties of the problem.[21] More and more persons familiar with the situation are coming to believe that the evils connected with home work can be remedied only by its abolition. The commissioner supervising the bureau of inspection himself believes that to secure any marked improvement in conditions home work must be forbidden. The lengthy process of constitutional amendment, however, would probably be required to secure any inclusive law of this nature. While a movement in this direction is being started other handicaps to the work of the division must not be overlooked. On account of the inadequate numbers of the staff, little criticism can be made of the failure to make the semi-annual inspections required by law, and inspections up-state, and to look for unlicensed tenements in a systematic way. Other handicaps are the weaknesses in the law, such as failure to include one and two-family houses, or to make the employer clearly responsible for the illegal employment of children. Yet even with every consideration for the difficulties of the task, the insufficiency of the force and the defects in the law, the conclusion must be reached that the division is inefficient in its regulation of home work. It is therefore recommended that:

1. The industrial commission should make a careful study of the administrative problems connected with the regulation of home work, with a view to finding whether home work should not be entirely prohibited.

[21] The difficulties of enforcing the license system were forcibly stated by Owen R. Lovejoy, secretary of the National Child Labor Committee, when he declared that if there were 13,000 licensed tenements there ought to be three shifts of 13,000 inspectors, each working eight hours a day, to watch them.

2. Pending complete prohibition of home work the commission should, after conferences with interested social welfare agencies, outline and present to the legislature amendments to the law covering at least the following points:

(1) One and two-family dwellings should be placed under the jurisdiction of the division.

(2) The owner of a licensed tenement should be made clearly responsible for insanitary conditions.

(3) Home work on linen fabrics to be laundered should be brought under the law.

3. The division of home work inspection should be given a larger force, sufficient at least to make biennial inspections throughout the state as the law requires.

4. The division should cooperate more closely with municipal agencies, such as the tenement house department and the department of health, which have closely related functions.

5. The division should hold conferences with tenement house owners to explain the purposes and provisions of the law and to work out reasonable and practicable sanitary standards and methods of issuing licenses.

6. The division should hold conferences with employers of home workers to explain the purposes and provisions of the law and to work out practicable and effective methods of issuing factory permits and maintaining registers of home workers.

7. After these conferences special attention should be given to the following matters:

(1) Issuance of licenses and of permits should be more strictly controlled, and they should be more often revoked when workers violate the law.

(2) Orders should be more often issued and greater efforts made to secure prompt compliance.

(3) Child labor requirements and the prohibition of work on certain classes of materials should be more rigidly enforced.

(4) Where the law is clearly enforceable more prosecutions should be instituted against wilful offenders, whether owners, employers, or workers.

8. The division should attempt to secure binding decisions on any part of the law the validity of which is in doubt.

Division of Industrial Hygiene

The division of industrial hygiene was established under the bureau of inspection as part of the reorganization of the department of labor in 1913. The law was passed practically as recommended by the factory investigating commission, and was intended to create a staff of experts for scientific research in the field of industrial safety and hygiene. Except the provision for a medical inspector in 1907 and a factory inspector who acted as a mechanical engineer shortly before the division was established, there had been little recognition of the department's need for a staff of technically trained men to do research work entirely apart from routine inspection. Among those interested in industrial problems it was believed that the division, with its relatively large resources and its provision for investigation by trained experts, had the greatest opportunity to do constructive pioneer work in the field of industrial hygiene that any individual or agency ever had in this country or abroad.

The law creating the division charged it with carrying on special inspections and investigations, making recommendations for the drafting and improvement of industrial codes, and preparing material for bulletins on industrial dangers and their prevention. The division was to include a "section of medical inspection," consisting of at least three physicians (one a woman) with salaries of $2,500 a year, which was to make studies of the effect of occupation on health, with special attention to the physical examination of working children. Other duties could be assigned the section by the commissioner of labor. The rest of the division was to consist of a physician, who was to be "chief medical inspector" in charge of the "section" above described, a chemical engineer, a mechanical engineer who was to be an expert on "ventilation and accident prevention," and "a civil engineer, and an expert in fire prevention and building construction."[1] Annual salaries of $3,500 were fixed for these experts, and the appointment of ten special investigators at $2,000 each to assist in the work of the division was also provided for.

When the industrial commission was established the division had already been in existence fourteen months. In accordance with a

[1] The presence of the comma after the words "civil engineer" made possible the appointment of an additional expert on fire prevention.

provision of the law stating that one of the experts might be appointed "director" with $500 additional compensation, the commissioner of labor had made the chief medical inspector, who had been medical inspector for the department since 1907, the head of the division. Besides the eighteen persons whose appointment was authorized by the statutes, the division included three "confidential agents" to assist on investigations, two examiners of plans for factory buildings to act as assistants to the civil engineer, a secretary, and two stenographers. Since June, 1914, the two tunnel inspectors in the bureau of inspection had reported to the director of the division. A small laboratory was provided in the New York office. The total payroll of the division was $75,640, and allowances for traveling expenses, rent, and supplies brought its total annual cost up to at least $87,000.

At the end of two years the general impression, both within the department and outside, was that the division had not done enough of the special work for which it was created to justify its existence. In the spring of 1916 the governor showed his belief that the division was a failure first by recommending that it be abolished entirely, and later by eliminating from the appropriation bill all salaries except those of the chemical engineer, the civil engineer, and two medical inspectors.[2]

Qualifications of Staff

The comparatively high salaries and the technical qualifications prescribed were intended to secure for the division high grade scientifically trained experts. Instead, the commission found it handicapped by employees not only lacking these qualifications but in some cases incompetent to do even the ordinary routine work of the department.

Particularly striking was the absence of scientific training among the ten special investigators, who received $2,000 salaries. Most of

[2] For the year ending June 30, 1917, the staff consists of these four persons and two inspectors transferred from the division of factory inspection. The latter are both physicians and one was formerly a medical inspector in the division. The director was retained as a medical inspector and the chemical engineer was made director. This report does not attempt to cover the work of the division after its reorganization July 1, 1916. Under the new director steps have already been taken toward developing the effectiveness of the division along the lines originally intended.

these men, whose positions had been exempted from examination by the state civil service commission in 1913,[3] had been active in machine politics.[4] So lacking were the special investigators in qualifications for the work they were supposed to perform that the department seems to have been puzzled what to do with them and shifted them from one routine function to another. When additional help was needed in the bureau of fire hazards, boilers, and explosives, for instance, several of them were temporarily assigned to magazine inspection, a very perfunctory kind of routine inspection requiring no technical training. Not more than four or five had any qualifications other than for simple work under close supervision. There can be little doubt that the presence of these incompetent "experts" at comparatively high salaries has tended to injure the *esprit de corps* of the department and to discourage the regular factory inspectors from study and self-improvement. Probably to a large extent because of the lack of technically trained men in the regular inspection force, the medical inspectors and other experts were utilized almost entirely to assist in regular inspection. This submergence in routine, and the lack of comprehensive plans for investigation and educational publicity, is one of the main causes for the failure of the division. This outstanding failure, so disastrous to the development of proposed scientific research, was, it is stated, due in part to the exceptional pressure of work growing out of a vast body of new labor laws thrust upon a new administrator after constructive work in the department had been partially suspended for several months owing to uncertainties as to the appointment of the labor commissioner.

Policies of the Division

Although in early plans it was proposed that the staff of "experts" hold monthly conferences to discuss the progress of the work, as well as weekly conferences with the medical inspectors and special investigators, not more than one or two such conferences were held. Instead of cooperating with other agencies and individuals who were at work in the same field, the director showed toward them what may be described as an unfortunate unscientific attitude.

[3] Application for the exemption of these positions was made by the commissioner of labor who went out of office before the appointments were actually made.

[4] See article by Mary Chamberlain, in the *Survey*, August 15, 1914, p. 499.

Toward the industrial hygiene division of the New York City Department of Health, formed in 1914, he took the position that the state division was "doing all there is to be done" and refused even to inform the city division what work the state division was doing, so that there would be no overlapping. In a brief survey of the work of the division, Dr. Alice Hamilton, the well known authority on industrial diseases, was much impressed by the absence of co-operation with the municipal division. She writes:

> I have wondered over the apparent lack of cooperation between this branch of the department of labor and the municipal department of health with its division of industrial hygiene. During the last few years we of the general public have seen no publications of the state department dealing with industrial hygiene, while the municipal department has brought out several. It seems as if there must be unnecessary duplication of effort here. The city makes an investigation of mercurial poisoning in hat factories, the state one into mercurial poisoning in the making of thermometers, and there is no attempt to coordinate the work, not even to have an agreement as to what constitutes mercurial poisoning.

The director formed no advisory committees of experts to help in planning a program of work for the division, which was one of the first steps taken by the city division of industrial hygiene. Nor, with a few exceptions, did he consult scientific men on special problems. Except for the occasional delivery of an illustrated lecture on industrial hygiene, little has been done to familiarize the public with industrial dangers and methods of prevention.

Within the period studied, moreover, the division has cooperated less and less with other parts of the labor department. Though at first the factory inspectors were inclined to refer special problems to it for advice, no definite plan was ever agreed upon by the division, or by the commission, through which the inspectors could make use of the results of its investigations. The division seems to have obtained for the former industrial board much information useful in preparing rules and regulations, but since the creation of the industrial commission it has had little direct connection with the code-making agency. Its studies and proposed regulations for dyeing and cleaning plants, the chemical industry, and several other lines of work, have not been used by the bureau of industrial code. In this general lack of cooperation, both inside and outside the department, lies another of the important causes for the failure of the division.[5]

[5] Since this study was completed the new director has taken up the preparation of several tentative codes for the bureau of industrial code.

Investigation of Reported Cases of Occupational Disease

The greater part of the time of the medical section has been given up to routine inspections instead of to investigations upon which new legislation and new codes could be based.

The labor law requires physicians to report all cases of occupational poisoning from lead, phosphorus, arsenic, brass, wood alcohol, mercury, and of anthrax and compressed air illness. Such reports are referred by the bureau of statistics and information, which receives them, to the director of the division, who, in turn, refers those which seem to him to need special investigation to one of the medical inspectors for investigation and recommendations for prevention. It is doubtful whether these investigations, as conducted by the division, have been of much value in lessening occupational disease. Fully a third of the reports received were not investigated. The delay between the time of making the report and the field investigation is another drawback to effective work. Though the bureau of statistics and information has forwarded notices promptly, several weeks have frequently elapsed before the investigator is sent out. After that interval it is often difficult to find the sick person or to get any reliable facts about his working conditions.

The possibilities of study of such cases are however limited by the fact that the law does not require the reporting of many recognized occupational diseases. Among those not mentioned are, for example, poisoning from dimethylaniline, paranitrianiline, dichlorbenzol, etc., various forms of pneumoconiosis, and tuberculosis resulting from faulty working conditions. The lack of constructive results in this work has been due, however, not to defects in the law but to its poor administration. The investigation of reported cases has on the whole been treated as a routine function having as its object primarily the issuance of orders for the improvement of conditions in individual establishments. Comparatively few preventive recommendations of significance to an industry as a whole have resulted from the investigation of these cases. Though the report of a single case of occupational disease may point to the need of changes in an entire industry, the broader possibilities of the work have not been realized.

Physical Examination of Employed Children

All the medical inspectors have given some time to the physical examination of working children and the woman inspector estimates

that about three-quarters of her work has been on this subject. Because no filing clerk was provided, however, she was obliged to give no small amount of time to transcribing and filing records of the examinations.

Selection of cases has been haphazard. It proved impossible at the start to cover all child-employing establishments. Then it was found impracticable to depend on securing the names of such places from the factory inspectors; so the plan was adopted of selecting from the industrial directory the establishments apparently employing the largest number of children under conditions that might be unhealthful. The woman medical inspector has given special attention to children employed in textile industries, but, because of other assignments, she has not been able to cover the entire field. With this exception no effort has been made to make a special study of children in any one industry. The work done was not tabulated until the statistical bureau did so by special request for the purposes of this study. The tabulation showed that the 857 children examined in the nine months ending June 30, 1916, were employed in thirty-nine different industries. In only two industries were there more than 100 cases. Thus too few were examined in any one industry to permit general conclusions. Moreover, with the exception of six cases of mercury poisoning found in mirror making, the defects classified have no vocational significance. They are for the most part the common forms of skin disease, defective vision and teeth, which are most frequent among school children. The children are advised on what to do to remedy these defects, sometimes sent to clinics, and frequently advised to change their occupation as a relief from monotonous tasks. Personal hygiene talks to individual girls by the woman inspector are another useful feature. But practically no follow-up work is done to see that the suggestions are carried out, and only two certificates have been revoked to prevent unfit children from working. Such action is essential if the children's health is really to be improved.

Little has been done on superintending the issuance of employment certificates. The medical inspectors have occasionally visited health officers in cities outside New York for the purpose of observing their methods. The three inspectors spent considerable time late in 1915 in preparing a pamphlet for the use of health officers on their duties in this matter, but it was not printed.[6]

[6] A pamphlet on this subject was printed subsequent to the period covered by this report.

The selection of cases and the character of the examinations has therefore made the physical examination of children, like the investigations of occupational disease cases, a routine function, from which general recommendations have not been and could not well be developed, and it has failed in its expected purpose of increasing the scanty stock of scientific knowledge of the effects of employment on children.

Physical Examination of Adults in Dangerous Trades

With the small staff of medical inspectors it has been impossible to make many examinations of workers in dangerous trades as the law provides may be done.[7]

Special Investigations of Industries

In addition to their routine work the medical inspectors have, since the industrial commission was organized, made nine investigations covering general conditions in an industry.[8] Nearly all of these were made or directed by the same inspector.[9] The investigations were carefully made. They included, in each case, inspection of the work place and examination of the employees. In a study of navy yard employees cooperation with the federal authorities was successfully arranged. The report of each of these nine investigations included recommendations of general significance for improving the sanitary conditions of the industry, without reference to individual plants.

Yet these investigations have been almost without effect. There seem to be two reasons for this. First, the director did not have a systematic general plan for making investigations. Sometimes an important subject, like anthrax, was more carefully studied. But in the rapidly growing aniline dye industry only a single plant

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[7] The labor law states [Section 51-a (3)] that in dangerous industries "the commission shall have power to make special rules . . . requiring medical inspection and supervision of persons employed and applying for employment."

[8] They covered thermometer works, diamond cutting, an aniline dye establishment, the use of wood alcohol in varnishing brewery vats, lead poisoning among navy yard employees, anthrax, lacquering, glass making, and women and children in canneries. Two earlier investigations were of the mattress making industry and a single cotton cloth bleachery.

[9] He has also studied compressed air illness.

was visited. And again, as in glass cutting, where the investigation was further limited by a refusal to allow the inspector to visit the center of the industry, the industry was of relatively slight importance. The medical inspectors state that the incompleteness of the investigations has often been due to the fact that the director put them on other work before they had time to finish a subject. Scattering of energies is fatal to scientific work in a field such as this. Contrast the results secured by the division in New York with unlimited opportunities before it, with the distingushed work of Dr. Thomas Legge, the medical inspector of factories in England, or Dr. Ludwig Teleky, in Austria, who have specialized in one particular problem at a time.[10]

Secondly, the results which, in the case of the more complete studies, were sometimes of much value were little used either in educational work or code making. None of the investigations has been published in any form.[11] Dr. Alice Hamilton writes after looking over the division's files:

> I am much impressed with the large amount of valuable material which is stowed away in these files. It seems a great pity that the information contained in some of the reports should not be published. We have so little accurate information as to the dangers inherent in most of our industries and so few intensive studies of the actual health of the persons engaged in them that it seems deplorable to keep in an inaccessible form some of this very sort of information.

The director states that no reports were printed because his division had no funds for publication. However, he made no effort to have any of the reports brought out through the bureau of statistics and information[12] which is especially equipped to edit and publish material from all the bureaus in the commission.

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[10] See for instance by Legge, the articles on "Arsenic Poisoning," "The Health of Brassworkers," and "Glassworkers' Cataract," in Kober and Hanson, *Diseases of Occupation and Vocational Hygiene,* and by Teleky, *Die Phosphornekrose* and *Die Gewerbliche Quecksilbervergiftung.* Under the directorship of the chemical engineer, who became head of the division on July 1, 1916, it is probable that the special investigations will be more carefully planned and more complete. He states that he expects to use three out of the four members of the staff in a complete study of the state chemical industry, from which recommendations can be drawn for preventive measures covering all its principal hazards.

[11] One report, on anthrax, was issued late in November, 1916. No efforts were made to cooperate with the bureau of statistics in the editorial work and printing of the report.

[12] See p. 481.

The report on thermometer works, which is dated April 4, 1916, was never referred by the director to the commission. In the diamond cutting investigation the medical inspector was able to show the union members that their "rheumatism," for which they paid large sums in sick benefit, was really lead poisoning, and they agreed to adopt any rules he might propose. But the commission took no action on this report, dated October, 1915. The medical inspector who, after investigation early in 1916, proposed to forbid the use of varnish containing wood alcohol in confined spaces, could get from the director no action on his recommendation until he submitted it direct to the first deputy commissioner in June of that year. In the meantime, the New York City Department of Health had succeeded in getting the breweries in New York City to adopt voluntarily a rule similar to that proposed.

Chemical Engineer

The work of the chemical engineer suffered like that of the medical inspectors from an excessive amount of routine and from incomplete and resultless investigations. His report for 1915 states that he spent much time in laboratory analyses of substances believed to be poisonous and in inspection of establishments where dusts, fumes, and gases were present and where it was possible to determine by chemical means whether they were present in sufficient amounts to be detrimental to health. When this proved to be the case, orders were issued and enforced. He also devised a light portable case for transporting material to the laboratory for analysis. At the request of various members of the department he has made photographs of buildings, safety devices, and other subjects, copies of which were used in an exhibit of the department at the Panama-Pacific Exposition.

A commendable feature of the chemical engineer's work was his reservation of one afternoon weekly for consultation with factory inspectors who wished to interview him on methods of preventing injury from dusts, fumes, chemicals, and the like.

Since the organization of the industrial commission the research work of the chemical engineer includes the preparation of a leaflet on the disinfection of sinks and water closets in industrial plants, which has not yet been printed, and an extensive investigation of the cleaning and dyeing industry in all parts of the state. The

report of this investigation was written for publication as a pamphlet, and contained detailed recommendations for the prevention of fire and accidents. It was submitted to the director the first week in January, 1916, but, although the National Association of Dyers and Cleaners and the New York Compensation Rating Board have asked for a large number of copies, no action has been taken on it.[13] Similar neglect was shown to an earlier study of the chemical trades in Niagara Falls made in the spring of 1915. This report contained detailed recommendations for the improvement of conditions, but no action on it has been taken by the commission. The chemical engineer also seems to have done considerable research work on the amount of carbon dioxide in the air and its effect on industrial workers, without any attention to the well proved findings of the New York State Commission on Ventilation that in the amounts likely to be encountered in occupied rooms it has little, if any, effect. In addition the chemical engineer has started no less than seven investigations into various occupational hazards which he was not allowed to carry to definite conclusions before being given another assignment.

Mechanical Engineer

From the reports and time cards of the mechanical engineer it is impossible to tell how or what kind of work he did.[14] He was continually reprimanded for failure to send in reports and seems to have been absent a great deal.

Civil Engineer

The civil engineer was very soon after his appointment made head of the separate "division of engineering," which examines plans for new factory buildings voluntarily submitted.[15] Nothing in the way of constructive investigation has been undertaken or planned.

Fire Prevention Engineers

Again owing to the inadequacy of the records of the division, it is very difficult to tell what the two fire prevention engineers have

[13] This report was published in the November, 1916, *Bulletin* of the commission, after the study of this division had been made.

[14] The services of this engineer were not provided for in the appropriation for the fiscal year 1916-1917.

[15] See p. 390.

done. However, their work seems to have been primarily routine, and has consisted of factory inspection, decisions on appeals from orders, and approval of fire alarm systems.

The work of the engineer who was assigned to cover the first inspection district with headquarters in New York City resolved itself largely into sitting on the board of appeals and later on the subdivision of appeals.[16] He was also a member of the board of approval which passes on fire alarm signal systems. He was authorized by the commissioner of labor to handle special appeal matters in the New York City office.

The other fire prevention engineer had his office in Syracuse and covered the entire up-state district. His chief duties were the inspection of the installation of fire alarm systems and the investigation of appeals on fire hazards and fire exits referred to him by the chief factory inspector in the second district. For the year ending September 30, 1915, the last four months of which were under the commission, he reported that he had inspected at the request of the officials of the department "not less than 400 factories throughout the state."

Aside from a few inspections made in connection with the investigation of dry cleaning establishments directed by the chemical engineer, the two fire prevention engineers seem to have made no special investigations for publication. No research material prepared by them is to be found in the files of the division, nor has any been published by the department. Their annual reports consist not of detailed recommendations but of generalities.

Conclusions and Recommendations

A survey of the work of the division of industrial hygiene discloses some valuable pieces of work by the medical inspectors and the chemical engineer, but on the whole confirms the general impression that the division has failed to carry out the purposes for which it was organized. To some extent this is due to the glaring lack of proper qualifications, not only among the special investigators but among some of the staff experts as well. An equally important reason for the failure of the division, however, has been its defective administration. Its course has been marked by failure to cooperate with allied agencies, public and private. In a field too large for any

[16] See p. 339.

one person to know thoroughly, it has not formed an advisory committee of experts to help in planning its activities, nor has it consulted experts on special problems. It has ignored the existence of the city division of industrial hygiene. Though responsibility for the omission does not lie mainly with the division of industrial hygiene, it is noticeable that its work has been in no way connected with the bureau of industrial code, as indirectly prescribed by law.[17] Its investigations have not been made with reference to the needs of the latter bureau and its recommendations have been ignored.[18]

No clear cut plan for work seems ever to have been formulated by or for the division, and the emphasis has come to be placed not on research and general recommendations, but on routine work and the improvement of individual conditions, on the issuance of orders and securing of compliances, which is properly the work of the regular factory inspectors.

Such investigations as the division could make in the time left from a mass of routine were not on subjects selected according to a systematic plan but seem to have been mainly haphazard assignments by the director. The investigators were not permitted to specialize and become thoroughly familiar with some single phase of industrial hygiene, nor even, with a few exceptions, to complete an investigation properly.

In spite of these handicaps the staff managed to compile some valuable reports and recommendations, but these have not been of service because they were never publishd or used in rule making. Other forms of educational publicity, such as public lectures and exhibits, talks to the factory inspectors, and conferences with employers and workers, have been only very slightly developed.

If the division is to accomplish the results for which it was organized, these policies must be changed, and it must become the principal body within the industrial commission for research in matters of industrial health and safety. It must be the investigating agency which assists the bureau of industrial code in drafting rules and regulations, and it must make known, by publication and other methods, the facts it ascertains.

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[17] Since September 1, 1916, the division has been cooperating with the bureau of industrial code in the preparation of a code on mines and quarries and on occupational disease.

[18] See p. 320 for further discussion of changes in this respect.

It is therefore recommended that:

1. A new bureau should be created which will combine the division of industrial hygiene with the function of code making; this bureau should be placed under the immediate direction of a person with administrative ability and scientific training who is specially qualified by previous experience outside of the department to direct research work in this field.[19]

2. Except as it may be necessary to advise and cooperate with the regular inspectors, the staff should be relieved from routine inspection work for the purpose of securing compliance with the labor law.

3. The work of the staff should be centered around the preparation of new industrial codes and the development of preventive recommendations for industries or occupations in which there is special hazard.

4. All important general investigations should be planned in cooperation with the chief statistician of the bureau of statistics and information, and the results turned over to him for publication by the commission.

5. More pamphlets, posters, etc., giving simple instructions for personal hygiene in different occupations, should be prepared and greater effort made to educate workers on the need for factory sanitation and personal hygiene, through cooperation with unions and through public lectures.

6. A small committee of persons with special experience in the field of industrial hygiene should be organized by the commission to cooperate with the division in an advisory capacity.

7. Cooperative relations should be established between the state division of industrial hygiene and the New York City division and duplication of work should be as far as possible avoided.

8. Strict requirements of training and ability to get results of scientific value should be applied to every member of the staff.

9. As soon as the division has demonstrated its ability to do work of scientific value it should be restored to its original size.

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[19] See p. 323.

Division of Engineering

The law permits but does not require builders of factories to submit plans to the labor department before construction or reconstruction, in order that the building may conform to the requirements of the labor law and expensive changes after it is finished may be avoided. This work which was started following the extensive labor law amendments of 1913 is done by a so-called "division of engineering," entirely separate from the division of factory inspection. Its head is the "civil engineer" of the division of industrial hygiene, who has until recently been assisted in the New York office by two factory inspectors, two plan examiners, and a messenger.

During the period when large numbers of factory buildings had to be altered to conform to the new laws of 1913, the work in the New York City office was far heavier than the force could cope with. The resulting long delays, the confused records, the frequent misplacement of plans because of lack of system, and the fact that a copy of each plan must also be submitted to the borough superintendent of buildings for much the same sort of examination, all produced a great deal of dissatisfaction. On May 19, 1916, the bureau of inspection gave up general plan examination in New York City. Only plans for fire escapes are now accepted, and these are referred to the supervising inspectors.

Up-state however, the number of plans sent to the Albany office is gradually increasing. In the year ending September 30, 1915, the two members of the Albany office force examined a total of 637 plans, 237 of which they approved. In the nine months period from October 1, 1915, to June 30, 1916, a total of 1,071 plans were examined, of which 642 were approved. These totals include plans amended and resubmitted as well as new plans submitted. The number of new plans submitted was 751 in the latter period of nine months in contrast to 467 in the entire fiscal year preceding. The number of conferences with contractors, architects, and manufacturers regarding proposed construction and alteration of buildings, and the volume of correspondence, have increased proportionately.

CHAPTER VII

Bureau of Fire Hazards, Boilers, and Explosives

The bureau of fire hazards, boilers, and explosives was created to take over the work of the state fire marshal when that office was abolished in 1915, shortly before the organization of the industrial commission. Its staff comprises thirteen persons: a "chief engineer" at $3,500 a year, ten boiler inspectors at $1,200, one of whom assists the chief engineer in supervising the work, a clerk, and a stenographer.

The title of the bureau is a misnomer in that the bureau has practically nothing to do with fire hazards. It has two distinct functions: (1) routine inspection and certification of steam boilers used for factory purposes, carrying ten pounds or more pressure to the square inch, and (2) routine inspection and certification of magazines in which explosives are stored. In each case the certification is conditional on the payment of a fee, intended to cover the cost of inspection. The bureau has authority to inspect only such boilers as are not regularly inspected by "a duly authorized insurance company" or by "competent inspectors acting under the authority of local laws or ordinances."

The same member of the industrial commission who supervises the bureau of inspection is responsible for supervision of this bureau, and is kept informed by the chief engineer through reports and personal interviews. Within the department there has been considerable confusion as to the bureau's exact status. The question of making it a division subordinate to the bureau of inspection has been brought up on several occasions, but in practice as well as in name it has remained independent.

Boiler Inspection

Three-quarters of the bureau's time is devoted to boiler inspection. The state is divided into ten districts, to nine of which inspectors are

assigned. One district, composed of five counties in the northeastern corner of the state is, because of its inaccessibility in winter, covered during the summer only by several inspectors from other districts. Assignments are for an indefinite period, and each inspector is required to live in his district. Inspectors ordinarily start work in the field at 9 A. M. and quit at 5 P. M., with an hour for lunch. Time necessary for making reports comes out of regular hours.

The chief of the bureau estimates that there are about 25,000 factory boilers in the state. Of these about 20,000 are inspected by private insurance companies, and in the cities of New York, Buffalo, Syracuse, and Yonkers the work is done by local authorities. The number of boilers remaining under jurisdiction of the state inspectors is, therefore, comparatively small; in fact up to June 30, 1916, the bureau had inspected, since its organization, approximately 2,500.

Uninsured and uninspected boilers are often learned of through the owner's request for an inspection, or through factory inspectors, but the majority of them are discovered by the direct search of the boiler inspectors themselves. While this method seems wasteful, the bureau has been unable to find any better method for its initial covering of the state. Once the state has been covered, a register can be maintained of all boilers subject to its jurisdiction and itineraries prepared with less loss of time than at present.

A visit for the purpose either of locating a boiler subject to the bureau's jurisdiction or of arranging with the owner a date for inspection, is called a "special investigation." If the inspector finds that the boiler has been inspected by an insurance company, he simply notes the date of the last inspection and examines the certificate of insurance.

When an inspection by the bureau is to be made the owner is sent printed instructions on how to prepare. When a boiler is examined for the first time, especially at its installation, complete data are obtained relative to dimensions, age, grate area, and other technical details. The allowable steam pressure is calculated, and the safety valve set accordingly. At subsequent inspections much of the detail may be omitted. If there is doubt whether the boiler is able to carry a certain pressure, the inspector may subject it to a "hydrostatic" test, in which the boiler is filled with water, all outlet valves closed, and the pressure actually applied. Inspectors have found that the

entire test takes from half an hour to four or five hours, because in many instances the boiler is not ready when the inspector arrives and has to be filled with water by buckets, and in some cases the boiler may, under pressure, leak to such an extent that the pressure has to be taken off so that the leaks can be calked.

As a rule, though, the boiler inspectors make only an internal or "hammer" test. For this the inspector enters the boiler and with the aid of a tapping hammer determines in detail the physical condition of the shell, the amount of scale, and the presence of dangerous deposits of sediment. A hammer test takes from one and one-half to two hours after the inspector reaches the factory, and if there is a battery of three or four boilers in one factory, the inspector may finish them all in one day. In most instances, however, there is but one boiler in a factory and the inspector may have to travel ten miles before he reaches the next boiler to be inspected. Therefore there is no set rule as to how many boilers can be inspected in one day. A tabulation of the work of the inspectors for a year shows that, exclusive of investigations for the purpose of locating boilers or magazines, and inspections of magazines, the whole force averages about one boiler inspection a day.

If dangerous conditions are found, the law requires that the owner or lessee be ordered to make necessary repairs within a specified time and to discontinue the use of the boiler until repairs be made. A fine of not more than $5 a day is provided for allowing anyone to use an unsafe boiler after notice, and an additional fine of $50 for each day's neglect to make repairs after the time set in the order has elapsed. In almost all instances, according to the chief of the bureau, orders for repairs are carried out by the owners of the boilers within the specified time. In the few cases in which the bureau is not notified that the repairs have been made, a notice is sent stating that the repairs must be made at once or the boiler will be tagged "unsafe" and its use prohibited. If this notice is disregarded, the boiler is tagged, and no instance is recorded of a boiler having been used after the tag was attached to it. Therefore, states the chief of the bureau, there has been no occasion for referring cases to counsel for prosecution. The "unsafe" tag may legally be removed only by the inspector after compliance with the orders has been secured. Since an action for the enforcement of the orders is based as a rule on the failure of the boiler owner to write, saying that he has made

the necessary repairs, it is questionable whether the bureau can know the actual extent of compliance with its orders. It would under the present method be perfectly possible, for example, for a boiler owner to escape making satisfactory repairs simply by writing a letter saying the repairs had been made. Before the next annual inspection of his boiler, it might blow up and nobody could prove that he had not followed the orders of the bureau. It is so much to the interest of the owner to make his boiler safe, however, that he probably would rarely take advantage of the state inspection in this manner.

If the report of the boiler inspector shows the boiler to be in a safe condition, or, if not, after the owner notifies the bureau that the repairs ordered have been made, a certificate of inspection is issued, providing the fee of $5 has been received. The bureau may forbid the use of the boiler until the fee is paid and may cancel the certificate if the required conditions are not maintained.

The certificates are supposed to be posted under glass in the boiler room, and although the law says nothing on the point it is the practice of the bureau to require them to be renewed yearly. Together with the certificate the bureau sends a printed notice specifying the number of the boiler. The owner is instructed to secure metal numbers about two inches high and attach them to the boiler under penalty of $5 for each day's failure after receipt of the printed notice.

The bureau has no authority to inspect portable boilers, such as are used for hoisting or in agriculture, nor boilers in mercantile establishments or office buildings, even though they may be more menacing to life than a factory boiler next door. Upon request of the owner, portable boilers are sometimes inspected, but the law should be amended to cover boilers used in any sort of work. There are also many other kinds of pressure vessels, such as containers for gases and for compressed air, which now entirely escape state inspection and which should be brought under the law.

From July 1, 1915, to June 30, 1916, the bureau made 1,616 boiler inspections, and 4,339 special investigations (part of which were investigations of magazines). The total sum collected in fees for boiler inspection alone during this period was $8,510. Supervision over the field inspectors by the chief engineer and the boiler inspector assisting him is maintained chiefly by correspondence, al-

though the chief and his assistant at times visit inspectors in their districts to give them instructions. Up to June 30, 1916, there had been since the inception of the bureau one general conference of all the boiler inspectors, on November 3, 1915.[1] Individual inspectors are called in for special instructions more frequently. Itineraries of magazine inspections are prepared at the office so that they will work in to advantage with the inspector's itinerary for boiler inspection, and the inspectors send in every day the appointments they make for future inspections, which are usually from ten days to two weeks in advance. By this means, the chief engineer states, he is able to reach any inspector by telegraph or telephone whenever necessary.

Each inspector sends in a daily report, and when the bureau learns of an uninsured or uninspected boiler, or when the date for a reinspection approaches it sends a notice to both the owner and the inspector.

Investigation of Explosions

The bureau has no authority to require that special reports of boiler explosions or magazine explosions be sent to it by the owners. It hears of such explosions only through chance reading in the newspapers or through clippings received by the department. The chief engineer states that since the inception of the bureau there has been no magazine explosion, and up to June 30, 1916, the bureau had not heard of any boiler explosions in the state. It is his purpose to investigate the cause of any explosion of a magazine or boiler coming under the bureau's jurisdiction.[2]

Cooperation with Other Agencies

There is some degree of cooperation between the bureau and insurance companies. The law requires the companies to report to the industrial commission all boilers insured by them, as well as those rejected, and the reasons for rejection. These reports cover one in-

[1] Another such conference was held on September 5, 1916.

[2] Since July 1, 1916, six boiler explosions have been investigated by the bureau, a report on the causes of the explosions being transmitted to the commission. Four of the boilers involved had been inspected and insured by private insurance companies; the fifth was a low pressure boiler lacking proper safety appliances; and the other was a boiler used for agricultural purposes and, therefore, outside the bureau's jurisdiction.

ternal and one external inspection yearly, and are duplicates of those sent to the owner. The bureau accepts the companies' statement regarding the safety of boilers. It does not issue orders for repairs on a boiler inspected by an insurance company, but if the report shows that the boiler is in a dangerous condition the bureau notifies the owner and the insurance company to have the boiler discontinued from use until the repairs ordered by the company have been made.

A certain amount of cooperation also exists with the division of factory inspection. About forty boilers a month are reported to the bureau of fire hazards, boilers, and explosives by factory inspectors as uninsured and uninspected. Although in about half of these cases it is later found that the boilers are insured but that the certificate has not been posted in the boiler room, this assistance is obviously of great value and should be encouraged. Boiler inspectors, on the other hand, have, according to the chief of the bureau, little opportunity to reciprocate. According to this official they are not familiar with the requirements of the factory laws, and have all they can do to make their own technical inspections. It would be desirable to make arrangements whereby the bureau's inspectors would report to the bureau of workmen's compensation factories which are not carrying workmen's compensation insurance, and for the bureau of compensation to report to the boiler inspectors accidents caused by boiler or by magazine explosions.

In view of the difficulty of organizing and developing boiler inspection the bureau may not be severely criticised for failure to coordinate its work with that of other bureaus. Temporarily there may have been some advantage in keeping it entirely apart from other inspection activities under the commission, but for the sake of closer correlation of work the bureau should ultimately be made a "division of boiler and magazine inspection" subordinate to the bureau of inspection.

Magazine Inspection

Magazine inspection is comparatively simple and requires no technical knowledge. It consists principally in determining the allowable quantity of explosives that may be stored in a given place by applying a rule-of-thumb computation based on the distance of the magazine from the nearest dwelling or other building where people are accustomed to assemble, the distance from the nearest railway, the distance from the nearest highway, and the existence

of an intervening natural or effective artificial barricade. The quantity stored at the time of inspection must be reported by the inspector and orders issued as to the maximum amount that may legally be kept there. The bureau also has jurisdiction over the structure and operation of the magazine itself, the kind of containers that may be used, and certain other conditions affecting the hazard of storing explosives. It has, however, no authority over magazines in cities of more than 1,000,000 inhabitants nor in any other city having a local bureau of explosives or combustibles.

According to the chief of the bureau there are about 1,000 magazines in the state, of which his men, in the year ending June 30, 1916, inspected 680, and the mine inspector inspected in quarries 183. Certificates of compliance were issued to the number of 817. This work consumes about one-fourth of the bureau's time. The actual inspection of a magazine may take on an average from one to two hours, but owing to the inaccessible location of most magazines it may require even a whole day to inspect a single one of them. Locating magazines within the bureau's jurisdiction is facilitated by a provision requiring an annual "certificate of compliance" for storing explosives. Persons who store such materials are required to keep a journal of all sales and removals, open to inspection at any time, and by examining these journals persons having quantities of explosives can be located. Visits to places where explosives are said to be stored, and interviews with owners of proposed magazines, are called "special investigations," similar to the visits incidental to boiler inspection.

The yearly license fee for a magazine ranges from $5 to $25 according to the amount of explosives stored. The original certicate of compliance is not issued until the inspector reports that the magazine conforms to the law and the license fee is paid to the commission. When the bureau learns that anyone has purchased or is storing explosives, a circular letter is sent him together with a copy of the law pertaining to the storage of explosives, an application blank for him to fill out, and a diagram of a magazine which would comply with the law. A date is suggested for inspection, and the original notice is followed by an inspection resulting in a certificate of compliance or an order to stop storing explosives. Between May 25, 1915, and September 30, 1915, the bureau made 758 inspections of magazines, issued 451 orders, and secured 433 compli-

ances. Receipts for magazine fees amounted to $5,180. The law makes any violation a misdemeanor, and the certificate of compliance may be cancelled; but the penalty is not enforced.[3]

Qualifications of Inspectors

All of the boiler inspectors were required to pass a technical civil service examination which covered their practical experience in operating or constructing boilers. Although there were no initial requirements of previous training or experience to determine who was eligible to enter the examination, the chief of the bureau states that each member of the present force has had from five to twenty years' experience either as a boiler maker, engineer, or boiler inspector.

The inspector who has passed the examination and been selected for final appointment is expected to have all the technical knowledge necessary for boiler inspection. He is sent out for a few days with one of the older inspectors who instructs him in filling out the different forms, summaries, and reports.

Comparison with Other Boiler Inspection Service

It is difficult to make any comparison between the work of the state boiler inspectors and boiler inspection work of insurance companies. Owners of boilers apply to insurance companies for inspection and have the boilers ready when the inspector arrives, whereas owners do not apply to the bureau for inspection and the state inspectors have to make "special investigations" to discover boilers that have not been inspected. In some instances, after having made arrangements for the inspection, the inspector finds upon arrival that the boiler is not prepared, and that he has to wait until it is made ready. Inspectors of this bureau also have to take care of the inspection and investigation of explosive magazines, which usually are located in places distant from railroads and therefore require livery service to reach. Insurance companies rarely inspect boilers in rural districts, which the state bureau must cover. Again, insurance companies inspect all boilers; whereas the state inspectors inspect only factory boilers or those used in mines, quarries, and

[3] Since this report was completed, prosecution has been instituted by the commission against an up-state quarry company for storing a larger quantity of powder than permitted by law.

tunnels. These differences between private and state inspection are reflected in the fact that, although they spend practically the same time on each type of test, the insurance inspectors each inspect on the average about twice as many boilers a year as do the state inspectors.

In New York City, where a boiler squad of the police department, of about the same size as the state bureau, examines some 14,000 boilers annually, the inspectors perform only the hydrostatic test; moreover, the concentration of the work into a small area reduces traveling time to a minimum.

Conclusions and Recommendations

The main recommendations which seem necessary as a result of this examination of the bureau of fire hazards, boilers, and explosives are:

1. The boiler inspection law should be amended to cover all boilers, portable as well as stationary, other than those already under the jurisdiction of the public service commission, and to permit the commission to adopt codes to regulate other containers for gases under pressure.

2. A scientific code regulating the construction and maintenance of boilers, conforming as nearly as practicable with the standard uniform boiler code endorsed by other states, should be promptly drawn up and put into effect.[4]

3. Repair orders and violations should be more vigorously followed up, and more use made of the penalty provisions.

4. The bureau should cooperate more closely with the bureau of inspection and the bureau of workmen's compensation.

5. The bureau should ultimately be made a "division of boiler and magazine inspection" of the bureau of inspection.

[4] A subcommittee on boilers was appointed in September, 1916, to work under the bureau of industrial code, and by April 1, 1917, it had drawn up and published in tentative form for hearings a complete code on the construction, installation, inspection and maintenance of steam boilers.

CHAPTER VIII

Bureau of Workmen's Compensation

In volume of work, operating cost, and number of employees, as well as in human appeal, the bureau of workmen's compensation ranks first among the eight bureaus under the commission. Its duties include investigation of claims for compensation, making of awards, supervision over payment of awards, and operation of a state insurance fund for the purpose of insuring the compensation risk for employers at minimum cost. In other words, it combines the functions of a claim court, an investigating and examining agency, and a large insurance company. Its functions and general organization are the same as those of the original workmen's compensation commission, except that it is headed by the industrial commission instead of by the former compensation commissioners.

Within the limitations of this study no attempt can be made to analyze all the important and difficult problems arising in the administration of the New York compensation law. In this comparatively early stage of compensation experience the commission is confronted with some new question of precedent or policy almost every day. It is now preparing through its bureau of statistics and information an illuminating review of court decisions on the compensation law,[1] and some of the important rulings and awards of the commission, as well as decisions of the courts, are published currently in the monthly *Bulletin*. There is need, however, for a thorough study of the tendencies developing under the New York act and it is hoped that the commission will assign some one under the joint direction of the head of the compensation bureau and the head of the bureau of statistics and information to make such an analysis and continue it currently. Uncertainty in interpretation of the law can be cleared up only by constant analysis of decisions and rulings, supplemented by legislative amendments as necessary.[2]

[1] This special bulletin was published in March, 1917, and covers all court decisions from July 1, 1914, to August 1, 1916.

[2] Up to June 30, 1916, appeals from the commission's decisions were filed

NEW YORK STATE INDUSTRIAL COMMISSION
DEPARTMENT OF LABOR

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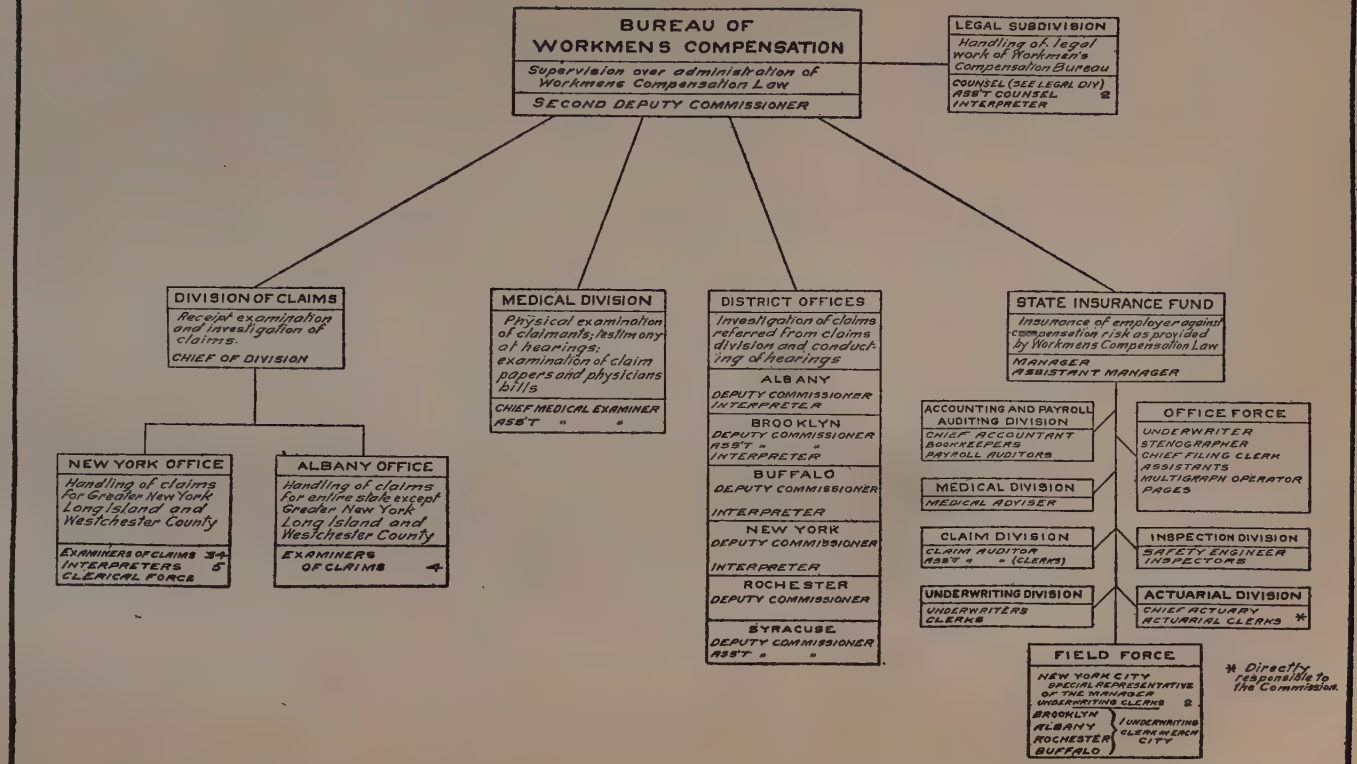

Principal Features of the Act

In no other state except Pennsylvania are so many persons affected by a workmen's compensation law as in New York. The New York act is compulsory in application to persons employed in a business carried on for gain, or by the state or its subdivisions, in forty-two groups of specified "hazardous" occupations. These occupations cover 200,000 employers and over 2,000,000 wage-earners, or about two-thirds of those in the state. They do not, however, include work in mercantile establishments, hotels, and restaurants, or casual employment, and farm labor and domestic service are expressly excluded, so that more than 1,000,000 persons, or about one-third of the state's wage-earners are not covered.[3] A 1916 amendment permits employers in omitted occupations to come under the act voluntarily.[4]

Only accidental injuries arising out of and in the course of employment, and diseases directly following therefrom, are compensable. Occupational diseases are in general not included, but awards have been granted in a few cases in which the disease was shown to have originated from a definite accidental occurrence. The law has one of the most liberal scales of compensation benefits in the country. For the first sixty days after an accident it provides free medical treatment, medicines, crutches, and other necessary apparatus. Cash payments of 66⅔ per cent of wages begin on the fifteenth day of disability and continue throughout its duration, subject to maximum limitations in certain cases. In death cases payment to widows is 30 per cent of wages until death or remarriage, and 10 per cent additional for each child

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in 597 cases, of which 156 were passed upon by the courts, the commission being sustained in 132 cases and reversed in only twenty-four. A large number of these appeals were in railroad cases involving the question of whether the law applies to injuries occurring in interstate commerce. This question was decided in the negative by the United States Supreme Court on May 21, 1917, in the cases of Jensen *v.* Southern Pacific R. Co. and Winfield *v.* New York Central R. Co.

[3] For an excellent analysis of the theoretical "coverage" of various state compensation acts see the recently issued *Bulletin No. 203* of the United States Bureau of Labor Statistics, "Workmen's Compensation Laws of the United States and Foreign Countries," 1917, pp. 64-72.

[4] The commission secured the passage by the 1917 legislature of an amendment extending the law to a number of additional occupations.

under eighteen years, subject to a maximum of 66⅔ per cent; and on remarriage a widow is entitled to two years' benefits in a lump sum. Maximum and minimum weekly limits of compensation are set at $15 and $5 respectively, except that the maximum in the loss of a hand, arm, foot, leg, or eye is $20 and if full wages are less than $5 full wages are paid. Permanent partial disability is compensated for a fixed number of weeks according to a schedule based on the character of dismemberments, or, if there is no dismemberment, 66⅔ per cent of the loss in earning power is given. There is a funeral benefit of $100, and certain alien dependents are included as beneficiaries. The fourteen-day waiting period before benefits begin is a serious defect in the law, and it should be reduced to seven days, as in other progressive states.[5]

Employers subject to the act must insure the payment of awards by either (1) insuring in the state fund,[6] (2) insuring in a private stock company, (3) insuring in a mutual company or association, or (4) depositing with the commission securities sufficient to guarantee the payment of all claims personally ("self-insurance"). All insurance carriers, except employers carrying their own insurance, are under supervision of the state superintendent of insurance, but supervision over the state fund is limited to examination of the adequacy of reserves.

Volume of Work

The volume of work done by the bureau during the fiscal year ending June 30, 1916, compared with that during the previous corresponding period, eleven months of which were previous to the creation of the industrial commission, is indicated by the following table:

[5] The 1917 amendment, providing that if disability lasts more than forty-nine days compensation shall be allowed from the beginning of disability, does not adequately meet the need. During the first nine months of the operation of the law, from July 1, 1914, to March 31, 1915, more than 120,000 injuries out of approximately 150,000 reported, or about 82 per cent, were excluded from compensation because they did not extend beyond the fourteen-day waiting period; moreover, of those which were compensated, only 6,819 cases out of 26,175, or 26 per cent, extended beyond forty-nine days. Reduction of waiting period to seven days would reduce the proportion of non-compensable injuries from 82 per cent of the total to about 70 per cent.

[6] See p. 421.

	Year ending June 30, 1916	*Year ending June 30, 1915*
Notices of accidents		
Notices followed by claims		
Received from workmen	29,414	53,887
Received from employers	56,485	54,299
Notices not followed by claims		
Received from workmen	42,051	78,745
Received from employers	175,688	180,215
Claims for compensation		
Claims filed	18,215	39,306
Claims disposed of	17,954	37,875
Claims pending at end of period	1,692	1,431
Agreements (direct settlements)[7]		
Agreements filed	32,646	1,549
Agreements disposed of	31,546	781
Agreements pending at end of period	1,868	768
Death Cases		
Claims and agreements filed	1,366	812
Cases disposed of	1,348	703
Cases pending at end of period	127	109

The second deputy commissioner, who is in immediate charge of the bureau, estimates that during the year ending June 30, 1916, there occurred in the state 315,000 industrial accidents, or more than 1,000 every working day, of which 60,000 were compensable. In connection with these accidents the bureau dealt at its offices with about 65,000 persons and enforced about $9,000,000 in cash indemnity and $3,000,000 in medical care, the average cash benefit being $160 and the average medical benefit costing $10. There were about 1,200 deaths, the average death benefit being $3,250. Accurate figures as to the amount or value of awards, however, can as yet be given only for the first nine months under the act, before the commission took charge, including results of these awards up to March 31, 1915. These are as follows:

Kind of award	*Cases Number*	*Per cent of total*	*Amount or Value of Present Awards*
Death	599	2.0	$1,941,194.86
Permanent total disability	14	0.0[8]	104,651.72
Permanent partial disability	2,058	7.0	1,070,933.42
Temporary total disability	26,161	88.9	1,109,570.22
Temporary partial disability	36	.1	718.50
Indeterminate	579	2.0	402,039.63
Grand total	29,447	100.0	$4,629,108.35

[7] Not permitted by law previous to April 1, 1915.

[8] Less than 1/10 of 1 per cent.

The average weekly wage in 25,579 cases in these first nine months under the law was $13.33. This would mean an average weekly payment of $8.88 on each award.

The extent to which awards prove to be uncollectable without legal proceedings is indicated by the fact that in the nine months ending June 30, 1916, 940 cases were referred to the legal division for collection, and that in 202 of these cases $12,801.69 was collected.[9]

Organization

When the industrial commission took charge the old compensation commission had been in operation only a year, and had scarcely emerged from the overwhelming difficulties of organizing and training its force. Claims were coming in at the rate of about 140 a day. The compensation commissioners had given all their time to hearing cases and had not been able to avoid having large numbers of cases come to them for final decision. The chairman of the industrial commission, who was the only member of the old commission to be appointed on the new, took over at once general supervision of the compensation bureau and continues to devote most of his time and energy to this particular phase of the new commission's activities.[10] The official responsible for immediate direction of the bureau's work is the second deputy commissioner (salary $6,000) under whom there are various deputies and divisions, comprising in all more than 270 employees. More than any other bureau's work, however, that of the compensation bureau is interwoven with the activities of all the agencies of general administration under the commission, namely, the commission itself which hears about sixty cases a week that are referred to it; the secretary's office, which is responsible for keeping records of awards, examining applicants for self-insurance, and handling the moneys of the state fund; and the legal division, which is constantly called upon for legal advice regarding pending cases, which must handle all cases appealed to the higher courts, and which must bring suit for collection of unpaid awards. Twenty-eight employees of the secretary's office devote most of their time to work relating to this bureau, and about half the time of the

[9] See "Legal Division," p. 486.

[10] See "General Administration by the Commission," p 262.

secretary himself is taken up with compensation matters.[11] Eleven employees of the legal division form a distinct subdivision given over entirely to compensation, and the chief counsel of the department devotes at least half of his time to such work.

In the course of his immediate direction of the bureau the second deputy commissioner decides questions of policy not requiring action by the whole commission, recommends decisions on difficult cases referred to him by the commission,[12] keeps informed on tendencies in compensation decisions, and holds conferences with his subordinates to discuss and initiate necessary changes in procedure. No small part of the bureau's success has been due to his persistent emphasis on a social viewpoint in its work. Much of his time is taken up with interviewing individual claimants or insurance representatives who wish to see the official "higher up." When claimants are in distress he tries to arrange through the insurance companies for immediate payments on awards, or places the claimant in touch with charitable organizations.

For adaptability in handling its complicated and growing duties, the organization of the bureau has purposely been kept flexible. The work is divided between three main divisions, (1) the claims division, (2) the medical division, and (3) the six district offices where hearings are conducted. The state insurance fund is really also a division of the compensation bureau, but in practice it has much the same direct relations with the commission as any of the bureaus.

Claims Division

The claims division is the hopper, so to speak, into which all reports of injuries and claims for compensation are poured. It has two offices: one in New York with sixty-seven employees, which examines claims arising in Greater New York, Long Island, and Westchester County and all state fund claims; and one in Albany with twenty-three employees, which examines all claims arising elsewhere in the state. Both offices have the same general form of organization, that in New York including units having to do with administration, mail distribution, filing of notices, filing

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[11] See "Secretary's Office," p. 294.

[12] During eight months, from March 1, 1916, to October 31, 1916, the second deputy commissioner recommended decisions on 856 such cases.

of records of insurance policies, examination of claims, field investigation relative to claims, preparation of calendars for hearings, examination of medical bills, filing of receipts for compensation payments, bookkeeping, and stenographic work.

Eight examiners and eight assistants assemble and examine claim papers. When a claim for compensation is received, the examiner sends to the injured workman or his relatives, the employer or insurance carrier, and the physician for statements necessary to develop the facts. When these have been secured he compares them, estimates the amount of compensation due, and prepares a summary of the case. If a direct settlement agreement has been filed by the employer, the examiner determines whether it is apparently in accordance with the law. Sometimes an agreement is not approved because it is not corroborated by the physician's report, but the examiners do not insist that medical reports be filed in connection with all agreements as would seem advisable.[13]

A special squad of two or three employees under the direction of the chief of the division travel from desk to desk assisting the claim examiners, give interested persons information concerning claims, take the places of examiners and other employees on vacation, and do other emergency work. Even with this "flying squadron" the examiners are unable to give sufficient attention to especially difficult claims. The number of examiners should be increased by at least five, and the examination of death claims, which requires particular skill and care, should be assigned entirely to one separate group who could become specialists in that work.

With its present limited force the bureau has found it impossible to assign more than two employees to field investigation for the purpose of securing first-hand information from workmen or their relatives, friends, or employers, that cannot be gotten through correspondence. The work of these investigators consists principally of ascertaining the exact names and addresses of claimants. It should be expanded to include investigations of facts relative to dubious claims or agreements.

The facility with which cases requiring a hearing are now disposed of is due to the careful preparation, five to seven days ahead of time, of separate calendars for claims involving death,

[13] Note, May 1, 1917: This is now being done.

disability, disallowed disability, lump sums, and medical care. In the New York office six employees are engaged in making up these calendars, attending and assisting at hearings, and recording and sending out notices of awards. The interpreters are also in constant attendance at hearings.

Three additional interpreters, speaking among them French, German, Italian, Polish, Russian, Spanish, and Jewish, give information and assistance to about 100 claimants a day, and also do a certain amount of investigation and translation of documents in connection with claims.

Because of the importance of making sure that employers would not, through neglect to insure, fail to meet their compensation liabilities, the law originally required the commission to keep on file copies of all policies of employers insured under the act. This plan proving cumbersome and unsatisfactory, the law was amended so that since June 1, 1916, the bureau files only cards sent in by the insurance carriers indicating that employers have taken out policies. The one clerk assigned to this work is unable to keep up with it, and the files are made difficult of access by being kept on a different floor from the other records of the bureau. Sufficient help should be provided to file all the cards systematically, together with records of self-insurers and clients of the state fund. In this way claim examiners would be enabled to determine the insurance carrier when only the employer is given.

Medical Division

The medical division consists of a chief medical examiner, an assistant medical examiner, and two stenographers. Its work includes (1) examination of claimants sent in by the division of claims or by the presiding officer during a hearing; (2) giving opinions on medical questions in hearings; (3) giving opinions on the reasonableness of medical bills; and (4) writing opinions on submitted medical evidence.

The division examines about 600 claimants a month for injuries, including the following, in order of frequency: fractures, infections, contusions, amputations, and lacerations. During the year ending June 30, 1916, the division examined the claimants in 8,287 cases, or more than one-sixth of the total number disposed of by the bureau during that period. The chief medical examiner

directs the work of the division, makes more important examinations, and gives opinions at hearings. Of particular scientific interest are the records which he keeps, giving not only his observations on the points at issue, but other facts regarding the physical condition of the claimant that may be of future use.

As it is highly desirable that more claimants be examined by the bureau's own physicians, in order that the determination of disability may be based on exact scientific information, at least two physicians should be added to this force. With two additional assistants, the chief medical examiner could spend more of his time in the hearing rooms, where he is needed almost continuously.

District Offices

The six district offices of the bureau are located at Albany, Buffalo, Rochester, Syracuse, Brooklyn, and New York, the last being in reality a part of the general administration. Their function is to represent the compensation bureau in the districts, and to investigate and hold special hearings in connection with claims referred to them by the Albany and the New York offices. A so-called deputy commissioner, subordinate to the second deputy at the head of the bureau, is in charge of each office. There are seven employees in the Albany office, and four in each of the other offices except the New York office, where no distinction can be drawn between those serving under the claims division and those engaged in conducting local hearings.

By far the greater part of the hearings are conducted in the New York office. At Albany there is also an office of the claims division under the control of both the Albany deputy commissioner and the chief of the claims division, whose office is in New York. Every Wednesday the deputy commissioner of the Syracuse office sits with the Albany deputy commissioner. A deputy commissioner in the New York office sits at hearings every day of the week except Saturday and Sunday, and hears on an average 140 cases a day.[14] On Monday, Tuesday, and Thursday, he hears general disability cases; on Wednesday, death cases and cases in which there are many witnesses, and on Friday, applications for lump-sum adjustments and medical bill cases.

[14] This average has since June, 1916, increased to about 200 cases a day.

Procedure in Handling Cases

The commission has endeavored to make its procedure in administering the compensation act as simple and free from technicality as possible. In order to establish a claim for compensation the law states that the injured workman or some one in his behalf must send notice of the injury both to the commission and to the employer within ten days after commencement of disability or thirty days after death. In practice blank forms prescribed by the commission for these notices are left with the employer by the insurance company carrying his risk, and in most cases the workman gets them from the employer, who, on receiving them back, forwards the proper one to the commission.[15] The law also requires that every employer operating under its provisions send to the commission within ten days a notice of every accident which causes loss of time beyond the shift or day on which it occurs, or which requires medical treatment other than first aid.[16] If the bureau has reason to believe that disability resulting from an accident reported to it in either way will last more than fourteen days, it sends to the workman a claim to present to the employer at the expiration of that period. When the employer receives a notice of injury or a claim for compensation, he has the option of making a direct settlement or of having an award made by the commission.

In the majority of cases the employer sends the claim directly to his insurance carrier. If he or the carrier reaches an agreement with the injured workmen regarding the payment of compensation, this agreement for direct settlement is sent to the commission. If the claim examiner considers it to be strictly in accordance with the law he endorses it and it goes to the commission for formal approval. If it is not approved, it is treated as a claim filed directly with the commission.

When the employer or carrier declines to pay compensation the

[15] The figures of notices "Received from workmen" in the table on p. 404 however, show that nearly one-third of the blanks are sent to the commission directly by the injured person.

[16] The requirement of the factory law that accidents occurring in manufacturing and certain other industries be reported within forty-eight hours, from which the returns to the department of labor were far less comprehensive, has been disregarded since the consolidation of that department with the compensation commission.

injured workman makes out a new claim and files it with the commission. Such claims, and disapproved agreements, come for hearing before a deputy commissioner. The carrier as well as the claimant is given opportunity to state its case and to call witnesses. The deputy commissioner may decide the matter at once, or may refer it, with his memorandum, to the commission, which usually affirms his awards. The stenographic minutes of these hearings constitute, in many cases, the record upon which the carrier goes up on appeal.

Often a deputy commissioner will suspend a hearing while the claimant is given a physical examination by the commission's doctor, who reports his findings in writing. This medical report aids the deputy commissioner in fixing a period of disability or in some instances in ascertaining whether the claimant is really suffering from the effects of a work accident. Employment of attorneys is not encouraged in compensation cases, although they often appear for the claimants and sometimes render valuable service. Their fees are fixed by the commission, and become a lien upon the compensation awarded to the claimant.

If either party is not satisfied with the award of the deputy commissioner, the claim is heard by the head of the bureau or by the commission itself. The interested parties again appear, and after considering old and new evidence a new award is made. If either party is still dissatisfied he may appeal to the appellate division of the supreme court of the third department; and if the decision of the appellate division is not unanimous or if the appellate division or a judge of the court of appeals consents the case may be carried to the court of appeals.

In case of voluntary agreement the first instalment of the indemnity is presumably paid at the end of the first week after the waiting period, or twenty-one days after the beginning of disability. If, on the other hand, a claim is filed with the commission, it is ordinarily not taken up until ten days after the expiration of the waiting period, subsequent to which an average of one week elapses while the claim is being examined, another week while notices are sent out for the hearing, and possibly still another week, after the award, before payment actually begins, making often a total of forty-five days between the commencement of disability and the receipt of any indemnity. In many cases,

however, payments on awards are made in advance of the award. The bureau expends much time and energy in assisting claimants to make their claims complete, and cases are placed on the calendar very quickly after they are in proper form.

No approval of a direct settlement, and no award, is binding until formally approved by the commission. Most formal approvals are accomplished by a single resolution covering a schedule of awards made on a given day. Four types of cases, however, come before the commission itself for individual hearing, namely:

1. Cases referred to the commission by deputy commissioners, including: (1) serious disability, calling for judgment of more than one person (such as the degree of loss of use of a leg or arm); (2) the most difficult lump sum adjustments, including disfigurement cases; (3) cases involving new points of law and determination of policy; (4) cases which the insurance carriers for some good reason want the commission to hear; and (5) cases concerning which the deputy commissioner wishes to avoid having a serious dispute with the insurance carrier.
2. Cases remitted by courts for rehearing or to make effective the order of the court.
3. Some cases which there is a petition to reopen.
4. Cases which the commissioners themselves wish to bring before the entire commission.

Most of these are heard in the New York offices of the commission, though occasional calendars are prepared for use at Albany. About four trips a year are made to each of the other up-state offices for the purpose of hearing claims that have accumulated. Specially difficult claims arising in the Buffalo, Rochester, or Syracuse offices are disposed of in the main by the two commissioners residing up-state.

After an award is made the law requires the employer to file with the commission a receipt for each compensation payment. The only way that full payment of awards can be assured is by keeping books for recording each payment and by notifying the employer or insurance carrier, in case of failure to pay, to send in either receipts or an explanation of their discontinuance. Because of shortage of help, accounts of this kind are now kept only for awards made previous to May 1, 1916, and are very incomplete because the bureau has not insisted on receiving notices of the workman's return to work or the necessary information for closing accounts. Books should be kept for all awards, and if necessary additional help should be provided for this purpose.

Special Problems

Among the many problems which have arisen in connection with workmen's compensation legislation in New York, several are of special interest from an administrative standpoint.

Adjustment to Foreign-Speaking Workers

Perhaps the largest of these special problems is that of adjusting organization and methods to the heterogeneous mass of foreign-speaking people who daily come in contact with the bureau. Fully 80 per cent of claimants who go to the offices of the commission to obtain compensation are foreign born. In a large proportion of cases communication is possible only through interpreters. The extent to which this adds to the uncertainty and variability of the work, day by day, can hardly be overestimated.

Utilizing Compensation Data for Accident Prevention

Another important problem is that of building up a body of statistical data on the causes and results of injuries for use in the work of prevention. Under the old labor department the bureau of statistics and information had issued careful tabulations of accidents reported to it from factories, mines and quarries, and building and engineering. But these figures were admittedly incomplete; in 1914 only 88,314 accidents were thus recorded, whereas during the first year the workmen's compensation law was in effect, beginning July 1, 1914, it is estimated that no fewer than 225,000 accidents, or two and one-half times as many, were reported under its provisions. The former compensation commissioners, however, had no statistical staff, and consequently attempted no analysis of the vast volume of accident data pouring in upon them. Upon consolidation of the two departments, the bureau of statistics and information discontinued its earlier work upon accidents notified under the accident reporting law, and took up the analysis of those reported under the compensation act. But here again shortage of forces interfered, and instead of tabulating all accidents so reported the bureau has been able to deal only with those for which cash compensation is paid, forming in 1915 only 40,000 out of 225,000, or less than a fifth of the total. Moreover, since the bureau of workmen's compensation sends cases to the bureau of statistics and information for tabulation

only after disability has ceased and the case is "closed," large numbers of them involving protracted or permanent incapacity are not turned over until long after their tabulation has ceased to be of much direct value from the standpoint of prevention. Nor has cooperation yet been established between the compensation bureau and the bureau of inspection, in order that the latter may make use of the accident reports for preventive work.[18] Representatives of the bureau of statistics and information should be assigned to both the New York and the Albany offices of the compensation bureau to tabulate accidents as soon as the notices are received from employers. The statistical bureau should send information on all serious accidents at once to the bureau of inspection for use by the supervisors in directing inspections, and should prepare compilations of accidents currently.

Familiarizing Workmen and Employers with the Law

Especially among the foreign-born, the bureau is continually confronted with the problem of familiarizing workmen with their rights and duties under the compensation law. Labor unions have done much in this direction, but nearly every day the bureau finds it necessary to relax rules in order to grant compensation to workmen who have filed claims in the wrong manner, and there are instances of workmen who have failed to secure compensation because of ignorance of the law. The bureau should conduct a comprehensive educational campaign, partly by speaking tours throughout the state, and partly by the distribution through trade unions, immigrant societies, and insurance companies of form letters or placards containing the provisions of the law and explaining the procedure in getting compensation. In both the oral and the written parts of this campaign Italian, Slavonian, and other common foreign languages should be used as well as English. At the 1916 session of the legislature a resolution was passed providing that copies of the compensation law should be printed in foreign languages but up to June 30, 1916, the bureau had not taken advantage of it.[19] In these activities the bureau of industries and immigration could be of great help.

[18] See "Division of Factory Inspection," p. 346, also "Bureau of Statistics and Information," p. 476.

[19] In November, 1916, the second deputy commissioner prepared a simple digest of the law for translation into foreign languages but up to May 1, 1917, it had not yet been translated or published.

Employers also often need education on compensation matters. On March 29, 1916, the commission held a "get together meeting" with the Associated Manufacturers and Merchants of New York State, at which the chairman answered questions concerning the interpretation and administration of the compensation law. By holding more such conferences to explain to employers the purpose and working of the act the commission could obviate much friction in its administration.

Economizing Time of Commission

As previously stated in the chapter on "General Administration."[20] the problem of reducing the time of the commission consumed in hearing compensation cases has become very serious from the standpoint of the work of the department as a whole. Up to the present more than half of the commission's time has been spent in this way, and its chairman, who supervises the compensation bureau, states that in view of the many new questions of precedent or policy constantly arising he does not think the commission can avoid for several years putting in on these cases at least two full days each week. Several of the other commissioners, however, favor placing more responsibility on the bureau itself for making final awards, or conducting final hearings by means of a specially delegated committee composed perhaps of one commissioner and the second deputy commissioner. Certainly one cannot attend many of the sessions of the commission at which compensation cases are heard without being impressed with the inroads on the commission's time in listening to hours of testimony intended to develop a few basic facts on which the award may be determined. In view of the multitude of important problems pressing upon the commission relative to such matters as safety education, industrial inspection, and code making, it seems unfortunate for it to be compelled to spend much of its time in deciding the award an individual workman shall receive. While it may be inadvisable to rule arbitrarily that any particular class of cases among those that now come to the commission be absolutely excluded, it ought to be possible to avoid taking cases out of the regular channels and bringing them before the commission as a whole merely because personal appeal has been made to an in-

[20] See p. 264.

dividual commissioner. It might also be possible for the bureau to consider practically all petitions to reopen cases, without taking them to the commission.

In addition to reducing the number of cases coming before it, much of the commission's time could be saved by the preparation of brief statements of fact covering all testimony already taken and limiting testimony before the commission entirely to new evidence. With the present limited force it might not be possible to do this without withdrawing a member of the legal staff from other work, but even at the sacrifice of other important duties this step would be justified.

A further possible means of relieving the commission is to place greater responsibility on the second deputy commissioner for final settlement of doubtful cases.

Getting Employers to Insure

Considerable trouble has been caused to the commission by the failure of small employers to insure their compensation risk, as required by law. Many of those who fail to insure have little or no tangible property within the state, which makes it difficult to enforce the law or for workmen to sue successfully for damages in the courts. The commission has determined to prosecute all employers whom it finds uninsured, and it institutes an average of about twenty-four such proceedings each week. The suggestion has been made that the law be changed to place all employers not otherwise insured automatically under the state fund, and to empower the fund to sue them for premiums due so that all employees would be protected. But this would have the obvious disadvantage of jeopardizing seriously the financial security of the fund, inasmuch as it would be obliged to assume the very poorest risks without assurance of being able to recover costs in a large percentage of such cases.

Voluntary Agreements

In its original form the compensation act required that all awards be made by the commission. Against the protest of many, who feared that the insurance company would in most cases favor the employer and that the injured workman or his family would be induced to accept less than they were entitled to, the law was in

1915 amended to permit direct settlements between employer and employee, providing a copy of the agreement were filed with and approved by the commission.

In the first year under this provision, from 60 to 70 per cent of the compensation cases coming to the knowledge of the commission have been settled through such voluntary agreements. There is no means of telling at present whether these agreements have resulted to the disadvantage of the injured person or not. The commission has even had considerable difficulty in getting many firms to file their agreements, so that probably a large amount of compensation experience is going unrecorded, and in some cases workmen may even have been entirely deprived of their legal indemnity. The problem is further complicated by the fact that in cases involving payments for long periods of time the commission has not succeeded in getting insurance carriers or self-insurers satisfactorily to file final receipts indicating that payments have ceased. Until more adequate information regarding the total amounts paid under agreements is secured no positive statement can be made as to whether or not the voluntary agreement plan has proven satisfactory. Whenever the commission, however, has had occasion to be suspicious of an agreement it has treated it as a claim and put it on the calendar for hearing. In cases which are seemingly compensable but in which neither agreements or claims are filed the commission sends a letter of advice with a copy of the claim form for the use of the injured workman.

Lump Sum Adjustments

Although the general intent of the law is that compensation be paid in regular periodical amounts proportional to and in lieu of regular wages, the commission is authorized to permit the adjustment of claims by payment of lump sums whenever it deems them advisable "in the interest of justice." It has taken the position that such lump sum commutations should be granted very cautiously and only when there is little cause for doubting that the claimant will be benefited. Among the cases in which lump sum payments have been approved are those in which such a payment will enable the injured person to set up a small business by which he may become self-supporting; cases of aliens who are or are about to become non-residents; those in which the payment is to

be used to support children in school; certain cases where justified to prevent malingering, especially in cases of neurosis; and occasionally where there is permanent partial disability and the injured person has recovered as far as he ever will.

Medical Service

Two questions which have caused vigorous and sometimes acrimonious discussion have arisen with regard to medical service. One is whether the employee should have the right to select his own physician, which he may not do now unless the employer fails to furnish him with medical attention. Workmen are inclined to distrust the doctor furnished by the employer or his insurance company, and object to being dictated to in the matter. Often they go to their own physician, with the result that the latter is unable to collect for services rendered. Medical men also charge that the insurance companies have control over medical service, that they cut fees, and tend to farm out the work to the lowest bidder. How much injustice is done to workmen and physicians in this matter could be determined only by careful field study. It is certainly to the interest of the employer or insurance carrier to get the injured man well as quickly as possible, and any policy of economy in medical service that defeats this object must sooner or later be recognized as short sighted.

The commission itself has not gone on record as favoring an amendment to the law to allow the worker to choose his own doctor, but the second deputy commissioner at the head of the bureau is strongly in favor of this change, and as an alternative he proposes that employers be required to post a list of reputable physicians from which the workman may select one. The commission wishes to encourage the development of special hospitals or institutions for the treatment of persons disabled in industry, such as have been developed in Germany and other European countries. Such institutions, equipped for special treatment to restore function and earning power and not merely to heal the wound, are much needed. This is a kind of medical service the ordinary physician or even the ordinary hospital cannot render. One of the largest commercial insurance companies is establishing such an institution for its own cases; the state fund has started a clinic in New York City for the care of employees of its policyholders

and at least one private institution is in operation and is soliciting cases for treatment on contract from insurance cmpanies and employers.

The other disputed question is whether the period during which the employer must furnish medical service should be extended to the full period of disability instead of being arbitrarily limited to sixty days, as at present. The head of the compensation bureau states that while medical service is found to be necessary beyond sixty days in comparatively few cases, in these few it is sometimes very essential. The reduction in length of disability that would come from unlimited medical service would in his opinion mean a saving more than balancing the extra cost.

Inclusion of Occupational Diseases

As previously stated, occupational diseases are for the most part not covered by the New York act, but a few cases which could be traced to definite accidental occurrences have been compensated. Among these are one or two of anthrax, lead poisoning, wood alcohol poisoning, and poisoning by chemical fumes. There has been some discussion of extending the law to cover all trade diseases, or at least to a specified list, but it should be remembered that even if this were done it would affect only a slight proportion of the illness among the state's wage-earners.[21] Large numbers of cases continually come to the bureau in which the injury is clearly due in considerable measure to ill health or disease which may or may not have resulted from occupation, but which might have been prevented under well administered health insurance. Health insurance, states the head of the compensation bureau, would reduce the cost of compensation to a very appreciable extent.

Conclusions and Recommendations

The bureau of workmen's compensation has energetically attacked the difficulties of organization and adjustment to its duties and has rapidly developed promptitude and effectiveness in disposing of the vast amount of work placed upon it. Throughout its

[21] In Massachusetts, where all occupational diseases are included for compensation under the term "personal injuries," only 4/10 of 1 per cent of the total number of reports of injuries during the year ending June 30, 1914, were for diseases of occupation.

activities it has maintained to an unusual and gratifying degree the spirit of social service.

A few suggestions for improving its operation may be summed up in the following recommendations:

1. The compensation act should be amended to cover all occupations except, possibly, farming and domestic service; to include occupational diseases as well as accidental injuries; to reduce the waiting period from fourteen to seven days; and to require medical service during the entire period of disability.

2. A thorough interpretative analysis of the precedents established and the tendencies developing in the decisions of the commission and its deputies on compensation cases since the act went into effect should be made under the joint direction of the second deputy commissioner and the chief of the bureau of statistics and information; and should be continued currently and made available for the use of the public as well as of the commission and its employees.

3. The amount of time required of the commissioners themselves for hearing compensation cases should be reduced.

4. The commission should get more adequate information as to the amount of compensation and degree of justice obtained by injured workmen who do not file claims but are paid by voluntary agreement; a special study of the results of these direct settlements should be made as a test of the working of this plan; and if agreements are not filed within ten days after the end of the two weeks' waiting period when notice of an injury likely to result in more than fourteen days' disability has been received, the notice of injury itself should be treated as a claim.

5. An aggressive campaign for the education of workers as to their rights and duties under the compensation act should be conducted; a simple digest of the law should be printed in all the principal foreign languages used among workers in the state (already provided for by the 1916 legislature); and the industrial council, including representatives of organized employers and organized employees, should be enlisted for cooperation in the educational campaign.

State Insurance Fund

The state insurance fund is a competitive business organization operated by the state for the purpose of underwriting compensation risks for employers at actual cost. The employer in New York has the choice of taking out insurance in a commercial stock company or in a mutual company where the cost is distributed among the members by annual assessments, of depositing with the commission securities sufficient to cover his own risk, or of insuring in the state fund. The fund has no immense force of field solicitors such as the private companies have, and is founded on the idea that through economy in administration and elimination of private profit it will be able to furnish insurance at a lower cost with better security and as good if not better service than stock companies can offer.

Although technically subordinate to the workmen's compensation bureau, the state fund is, in practice, responsible directly to the commission. General supervision over it is assigned not to the commissioner in charge of the compensation bureau, but to another member of the commission, while the responsibility for investing its funds is given to still a third commissioner. The manager of the fund, who is its active head, reports directly to the commissioner supervising the fund, and through him to the commission as a whole. The commission is, in effect, the board of directors of the fund, determining general policies relative to its management and responsible for the handling of its moneys. In the making of awards and the settling of claims for compensation from employees of policyholders, the commission exerts another type of control over the fund similar to that exerted over all insurance carriers, except that the fund cannot appeal from the decision of the commission to the courts.[1] The logical result of such a combination of control on the part of the commission is a general administrative policy that is concerned not only with advancing the welfare of the fund as a business organization but with demonstrating the commission's ideas of liberality and justice in the payment of compensation.

[1] The commission may, if it desires, certify disputed questions concerning the fund to the appellate division of the supreme court for opinion.

Competitive Relation with Private Insurance Companies

The experience of state compensation insurance in New York is of particular interest because here one of the best opportunities in the country is afforded for demonstrating its soundness and practicability. The competitive basis on which the New York law places the state fund puts it to rigid test in the largest industrial state in the union and in a state where stock insurance companies have long been firmly intrenched. These companies bitterly opposed the establishment of the fund and have continually sought to discredit it and prevent its growth by open attacks and insidious circulation of stories to the effect that it is financially insecure and offers inferior protection.

A great deal of the time and energy of the management of the fund has necessarily been taken up with endeavoring to counteract these misrepresentations. In August, 1915, the vice-president of one of the largest stock companies doing compensation business in New York went so far as to address a letter to the governor attacking the state fund, which letter was used as a means of getting newspaper advertising for certain malicious arguments against the fund. The charges were completely refuted by the manager of the fund, who was supported by both the commission and the governor.[2]

The stock companies enjoyed certain initial advantages over the fund, consisting in the possession of large surplus and reserves; in their connections with an army of insurance brokers and agents throughout the state; in their ability to write other forms of insurance needed by employers in addition to compensa-

[2] A pamphlet containing all the correspondence involved in this attack, under the title *The State Fund—Its Right to Compete,* may be obtained from the industrial commission, 230 Fifth Avenue, New York City. The argument frequently used by the stock companies in their efforts to discredit the fund, that the constitutionality of the act establishing it was very doubtful and that, therefore, it might at any time be thrown out of business by a decision of the courts, has been completely answered by the decision of the United States Supreme Court in the case of N. Y. Central R. Co. *v.* White (37 Sup. Ct. 247), handed down on March 6, 1917, in which the New York statute was upheld. Another oft-repeated argument of the stock companies, that policyholders of the fund are subject to assessment to cover deficiencies, is directly in conflict with rulings of the commission and the attorney general that the act contains no specific provision for enforcing an assessment.

tion insurance—public liability, employer's liability, boiler insurance, elevator insurance, fire insurance; and finally in the advantage afforded by the preference of most business men for private enterprise as opposed to state management.

The principal advantage, aside from the fact that it provides insurance at cost, which the state fund has over other insurance carriers is that its policyholders are given absolute immunity under the compensation act from liability to any person in their employ, while such immunity is not given under any other form of insurance.[3] All profit accruing to the fund is eliminated by the provision that after proper reserves have been established, any excess of income shall be distributed to the insurers in the form of dividends to be credited upon the next premium. In addition, the expenses of administration were paid by the state for the first two years, that is, till July 1, 1916.

The privilege of the fund to insure employers in small trade groups, the members of which get the benefit in dividends of any saving in the cost of their own insurance, is also an advantage from a competitive standpoint. They pay the same premium as other employers in the same general class in point of view of hazard, but at the end of the year, after first charging off actual loss payments, plus the amount necessary for future reserves, plus 5 per cent for catastrophies, and finally the required percentage for management expenses, the balance is credited to the members of the group as dividends on payment of the next premium. The policy of the management has been not to start a group unless the employers included represent a total of from 2,500 to 3,000 employees and pay a total semi-annual premium of not less than $750. Most of the special groups so far established, however, run much higher than this in number of employees covered and premiums.

This form of insurance has an especial appeal to the very large employer who would otherwise carry his own risk and to associations of employers already organized for trade purposes, whose business is comparatively non-hazardous and who thus are given

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[3] For a full discussion of the "Advantages and Disadvantages of State Funds in Workmen's Compensation," see address by F. Spencer Baldwin, manager of the fund, in *American Labor Legislation Review,* Vol. VI, No. 1, March, 1916, pp. 3-10.

all the advantages of trade mutual insurance and relieved from the burden of carrying part of the compensation costs for highly hazardous industries. It promotes accident prevention by giving the industry the direct benefit of reductions in number of injuries. At the same time this special group system benefits the other policyholders in general groups in that it brings to the fund a large volume of business with preferred risk, about one-third of the total premiums paid into the fund, and spreads the overhead, or management, charges over a larger field, as well as adding to the general stability of the fund.

While there have unquestionably been certain distinct advantages in having the fund a part of the department administered by the industrial commission, there have also been certain disadvantages from a competitive standpoint. The plan of having the business affairs of the fund subject to the absolute control of a commission of men unfamiliar with insurance problems, without any participation by the policyholders in the settlement of administrative questions, has been to a greater or less degree a check on its freedom to develop its efficiency as a business organization. The commission has not encouraged the establishment of an adequate claim auditing department entirely independent of the claims division of the compensation bureau, nor a staff of field investigators to make it possible for the fund to investigate claims as the private companies do in order to check malingering and deception.[4] The subordination of the fund to the workmen's compensation bureau, while technical rather than actual, is unnecessary and only adds to the possibility of embarrassment, or even friction, in the relations of the two, when disputes arise over awards.

One of the arguments used by the critics of state fund insurance is that the fund is at a great disadvantage in being required to accept all applicants, without the privilege of rejecting bad risks. It was freely predicted that the fund would have such a large proportion of undesirable business that its loss ratio would be abnormally high. In regard to this the manager of the fund states that, as a matter of fact, the power to fix rates and to impose

[4] Late in 1916 the commission approved a plan for a claim auditing department and a staff of field investigators under the fund and the 1917 appropriation includes salaries for the necessary additional employees.

differentials in the case of individual risks of an extra-hazardous character affords a measure of protection against adverse selection, and that by use of this power the fund has been able to make undesirable risks bear their own burden.

Growth of the Fund

While the fund has suffered much from misrepresentation of the kind mentioned and has been handicapped in many ways from a competitive standpoint, it has shown a rapid growth, and has conclusively demonstrated its economy and financial security. Its rates of insurance average approximately 20 per cent cheaper than those of stock companies, and the fund has been able to grant dividends on the first eighteen months' business averaging about 15 per cent of premiums. In an address before the annual meeting of the American Association for Labor Legislation in Washington, D. C., on December 28, 1915, F. Spencer Baldwin, manager of the fund, stated that:

> On a conservative estimate, employers insured in the state fund saved half a million dollars on the cost of their insurance for the first year, as compared with what they would have paid if insured in stock companies; while, on the other hand, employers insured in the stock companies paid something like $3,000,000 more for their insurance during the first year than they would have paid if insured in the state fund.[5]

The growth of the fund since its establishment in 1914 is shown by the following figures:

Date of end of semi-annual policy period	*Number of policies*	*Net premiums at the end of the policy period*
December 31, 1914	7,128	$689,764.94
June 30, 1915	7,853	597,272.96
December 31, 1915	8,507	696,340.19
June 30, 1916	9,210	848,260.49

At the end of one and a half years from the time it began business it was writing 12 per cent of all the compensation insurance written in New York state, and more than any other insurance organization except one stock company. The mutual companies and the self-insurers each, collectively, write about the same amount as the fund, and the private stock companies the remaining 60 per cent.

Its balance sheet for the half year ending June 30, 1916, shows the following:

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[5] *American Labor Legislation Review*, Vol. VI, No. 1, March 1916, p. 3.

Assets		*Liabilities*	
Investments	$1,495,553.68	Reserve for losses.....	$1,406,485.70
Cash on deposit.....	95,556.03	Reserve for catastrophe	187,714.54
Policyholders' accounts.	113,298.17	Other reserves and surplus	133,669.67
Accrued interest	23,462.03		
Total assets.....	$1,727,869.91	Total liabilities....	$1,727,869.91

The following data summarize the accomplishment of the fund for the first two years of its existence, ending June 30, 1916:

Premiums in force.....	$715,275.46
Net premiums written.....	$2,831,638.18
Earned premiums	$2,754,290.91
Expenses (estimate)	$365,225.54
Expense ratio to earned premiums.....	13.2%
Losses and loss reserve (including $42,194.57 deferred claims department charges).....	$2,127,428.68
Loss ratio to earned premiums.....	77.2%
Total surplus accrued to policyholders	$519,964.00
Dividends allowed	$505,836.57
Investments	$1,495,553.68
Number of accidents reported.....	27,193
Number of death cases.....	200

Examination of the past reserves and liabilities of the fund shows that the reserves have at all times been adequate. The fund is required to make periodical reports to the superintendent of insurance and may be examined by him at any time. Perhaps the surest guarantee of the soundness of the fund is the character of its management. The original compensation commission selected a man of the highest caliber as manager, and allowed other important positions to be filled purely on the basis of efficiency. Nothing short of the continued exclusion of politics from influence over the personnel of the fund should be tolerated, and one of the primary duties of the industrial commission in relation to it is to prevent its manipulation for political purposes.

The *Insurance Year Book* for 1915 contains some interesting facts regarding the operating cost of private casualty companies in comparison with that of the state fund. From the statements of twenty-six stock companies doing business in New York it appears that their ratio of management expenses to net premiums for their combined business in that year was approximately 40

per cent. In other words, out of every dollar of premium paid to the stock companies on 1915 business about 40 cents went for management expenses. In the state fund the ratio of management expenses to premium receipts for the year ending June 30, 1916, was 10.6 per cent. That is, only about 10½ cents of each dollar of premium income was used for administrative expenses.

The significance of the growth of the fund is more apparent when it is contrasted with the fact that in 1915 four stock companies stopped writing compensation insurance, and that in June, 1916, one mutual company was on the verge of failure[6] and two others had voluntarily withdrawn from the field.

In view of the fact that the fund has thus in two years demonstrated the economy and effectiveness of state insurance, it should not only be given the support of the employers of the state and be allowed every opportunity to extend its business, but should in the near future be freed from hampering competition by prohibiting private casualty companies from participation in compensation insurance business. Compensation insurance is, in reality, a tax assessed on industry by the state and there is no sound argument for having it collected by private corporations, who receive fees and profits for so doing. Under the present competitive system the fund is forced both to give less satisfactory service and to incur greater expense than it would if the adverse influence of the private companies were removed.[7]

[6] This company, the First Mutual Liability Insurance Company of New York, was taken over for liquidation by the state insurance department on July 5, 1916, and by May 1, 1917, two additional mutual companies had withdrawn from the field, making five altogether. In November, 1916, the Casualty Company of America ceased writing compensation business and on May 4, 1917, it went into the hands of the state insurance department for liquidation. Although it reinsured its policyholders so that new losses will be covered, it has not sufficient assets to pay compensation on awards made previous to its failure. The industrial commission is in this case compelled to proceed against the employers themselves for further payments due.

[7] In Massachusetts the *Report of the Joint Special Recess Committee on Workmen's Compensation Insurance Rates and Accident Prevention* issued in February, 1917, states (p. 31) that during the first four years the compensation law was in effect "the cost to Massachusetts industry for maintaining the present competitive system of compensation insurance has been between $2,500,000 and $3,500,000 or about enough to have met all the compensation payments called for by accidents during the year 1915." In Ohio, after five years' experience, the legislature in 1917 absolutely forbade the participation

A step that should be taken in the meantime to enlarge the business of the fund, is to require all state departments and political subdivisions to pay premiums into the state fund to cover their payroll exposure under the act, thus putting the compensation of government employees on an actuarial basis instead of on the present annual appropriation basis with all its uncertainties and delays.[8]

Organization and Procedure

The eighty-eight employees of the fund are organized into nine departments of subdivisions, namely: (1) actuarial department; (2) underwriting department; (3) accounting and payroll auditing department; (4) inspection department; (5) field force; (6) claims department; (7) medical department; (8) filing department; and (9) office force.

Administrative policies are formulated by and carried out under the general direction of the manager, whose time is devoted largely to promoting the business of the fund. The assistant manager directs the routine work of the office, assists the department heads in solving difficult problems, and supervises the field work of the underwriters.

Under the chief actuary, who is directly responsible to the commission for determining the rates, dividends, and reserves of the fund and for computing the present value of future payments in certain cases, there are six employees. The general work of his department includes: a quarterly valuation of the outstanding claims of the fund, of which there are about 10,000; a yearly analysis of the accident experience of certain classifications of industries when the department believes the previous rates charged to be questionable or when particular firms have requested a re-

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of private insurance carriers in workmen's compensation business. A comparative study of the different types of compensation insurance in this country, made by the official British Columbia Committee of Investigation on Workmen's Compensation Laws, in 1915-1916, led to the conclusion that an exclusive state-administered fund was the most satisfactory. See summary of report in United States Bureau of Labor Statistics, *Monthly Review*, November, 1916, pp. 10-15.

[8] In May, 1917, the state administration decided to cover its compensation risk by insuring in the state fund.

consideration of their rates; individual experience rating for about 2,000 firms a year; computing the present value of cases when the commission grants lump sum awards; computation of amounts to be paid into the aggregate trust fund which on June 30, 1916, amounted to $614,263.20; semi-annual analysis of losses; and calculation of dividends. The staff has done pioneer work in the compensation insurance field in devising tables for computing reserves on fatal cases, and for setting up loss reserves on all other cases, and has gained recognition among the foremost actuarial experts in the world. The state insurance department recently required all mutual companies writing compensation insurance to compute their reserves on the basis of the tables of the fund.[9]

The underwriting department consists of eleven employees. When an application for insurance is received, a rate is computed on the basis of the fund's schedule of rates and the rates of the Compensation Inspection Rating Board, a cooperative organization maintained by the New York companies writing compensation insurance for the purpose of computing the risks of insured firms. After approval by the manager or his assistant the computed rate is sent to the firm applying for insurance. If the firm decides to accept the proposed rate it becomes insured in the fund as soon as it has sent in its first premium. If the risk covered by a newly issued policy comes within the scope of the merit-rating or experience-rating system,[10] a synopsis is sent to the Compensation Inspection Rating Board, which then makes an inspection to determine as accurately as possible the probable risk of the firm. In securing new business the fund is aided by the factory inspectors, who notify it upon finding that a firm has failed to post a notice of insurance. The underwriting department then writes to the employer urging him to become insured in the fund, and if no answer is received a second letter is sent warning the employer that he will be reported to the legal division if he does not insure, as required by law.

[9] It has recently developed that several of the tables of the well-known Swiss Accident Insurance Association, of Lucerne, Switzerland, are very similar to those of the fund, although the two companies worked independently.

[10] Merit-ratable risks are mostly manufacturing firms; at present the fund has about 3,000 such risks. Experience-ratable risks are risks that pay annual premiums of at least $125.

The accounting and payroll auditing department consists of thirteen employees who keep the books of the fund, audit the payrolls of policyholders, and collect the semi-annual premiums. Four of them make payroll audits during seven months of the year. It is the intention of the management of the fund to audit all payrolls of policyholders at least once a year, but owing to lack of help the department has been able to audit each year only about half of them. From October 1, 1915, to February 1, 1916, it cost the fund $3,450 to make audits of payrolls, but the work resulted in a $35,682 increase in premiums, a gain of $10 for every dollar spent. As the fund has a semi-annual policy period, the "billing seasons" occur twice a year, from August to October, and from February to April, during which eight employees of the department, including the four payroll auditors, are engaged in sending bills to policyholders. All accounts that cannot be collected are sent to the state attorney general. In the two years ending June 30, 1916, these numbered 682, involving premiums of $8,250. Of the delinquent policyholders 490 subsequently paid their premiums, amounting to $5,662; the other accounts have either been cancelled for non-payment, or part payments have been made and the policies continued. In addition to these accounts of policyholders, the accounting and payroll auditing department has, during the two years ending June 30, 1916, reported to the attorney general the accounts of 196 policyholders whose policies had been cancelled for non-payment of premiums; seventy-eight of these subsequently paid their premiums, amounting to $892.

The inspection department consists of four inspectors, one in Albany, one in Buffalo, and two in New York, supervised by a safety engineer whose office is in New York. The functions of this department are to secure technical information as to exact extent of the risks of policyholders and to advise them on accident prevention. In the exercise of these functions the department makes (1) inspections of risks not covered by factory inspection; (2) inspections of risks to determine the amount and the nature of the payrolls; (3) merit-rating inspections; (4) safety inspections to aid policyholders in preventing accidents; and (5) investigations of accidents. Inspection of industries not covered by factory inspection includes investigation of such work as building demolition and the construction and repair of boats, docks, and

dry docks. The building departments of the five boroughs of Greater New York send to the fund information concerning new contracts, and if the underwriting department succeeds in insuring the work the inspection department usually inspects. Technical investigations for the purpose of estimating the number of men that will be required to do certain jobs, in which the employers might be tempted to understate their payroll exposure, include inspection of such work as building, sewer, or subway construction. Many inspections of this type are also made to estimate the risks in industries where the operations involve varying degrees of danger. The safety inspectors make merit-rating inspections when the reports of the Compensation Inspection Rating Board show increases in merit-rates, or when the policyholders request. Often when the fund issues safety recommendations to a policyholder the latter will request a merit-rating inspection in order to show that it has adopted some of the recommendations. Most of the department's inspections, however, are made for the purpose of giving safety advice and information. The engineer in charge estimates that in the year ending June 30, 1916, the department sent out after such inspections 20,000 recommendations, as many as 200 sometimes being included in a single list.[11] The safety inspectors also make about eighty investigations of accidents a year. Each week the safety engineer receives from the claims department of the fund a list of accidents, of which the inspectors investigate all that caused death if they seem preventable, unless they occurred in very isolated places, and also some of the more serious non-fatal accidents. The reports of these investigations are given to the manager of the fund, to be used mainly in the settlement of claims; and conclusions drawn from the investigations are sent to the policyholders in the form of recommendations. During the year ending June 30, 1916, the department made altogether 1,534 inspections. As the fund has approximately 8,000 risks, this would indicate that not more than one-fifth of the policyholders were inspected. The fund has 4,200 folders of inspections either by its own inspectors or by the Compensation Inspection Rating Board, all but about 100 of which were made for policyholders of the fund.

[11] See "Division of Factory Inspection," p. 346 for suggestions relative to cooperation between the safety inspectors of the fund and the regular factory inspectors.

The field force of the fund consists of one underwriter in each of the cities of Brooklyn, Albany, Syracuse, Buffalo, and Rochester, and three in New York City. Their functions are in general those of the agents of insurance companies, *i.e.*, calling upon employers who are considering insuring in the fund; calling upon policyholders who wish information concerning their policies or claims; investigating claims referred to them by the claims department of the fund; representing the fund in hearings before the deputy commissioners; and carrying on correspondence with policyholders in their districts. They report weekly to the assistant manager.

The claims department[12] of the fund consists of nine employees who check awards against the fund proposed by the claims division of the compensation bureau, represent the fund in compensation hearings in New York, and prepare the medical bill calendar of the fund for approval by the commission. All papers relating to state fund accidents and claims come first to the claims department of the fund, whence they are forwarded to the compensation bureau's claims division. Claims are first examined by the latter division, and then sent back to the claims department of the fund. If the reports of the employer, the employee, and the physician do not agree, this department tries to reconcile conflicting statements through correspondence or by telephone. If the award proposed by the claims division is questionable, a representative of the claims department of the fund confers with the division in an effort to adjust it satisfactorily. When information as to the physical condition of the claimant is needed, he is notified to report for examination by the medical director of the fund or by a doctor designated by him or by a deputy commissioner. If the fund's claims department approves the proposed award of the claims division of the compensation bureau, and if the claimant is willing, the case goes on the "facts agreed" calendar, to be formally approved by the commission. If there is any doubt as to the settlement of a claim, the case goes on the calendar for hearing before the deputy commissioner or before the commission. Hearings are held in about 20 per cent of the state fund cases.[13]

[12] Not to be confused with the claims division of the workmen's compensation bureau discussed on pp.

[13] From July 1, 1914 to November 10, 1916, there were 1,851 state fund cases, of which 1,508 were in the "facts agreed" class.

Awards are paid by the cashier of the commission as soon as possible after the hearing. When claimants are destitute, special arrangements are made by order of the presiding commissioner and the secretary, by which claimants are paid on the day of the hearing. The cumbersome system of having to obtain the fund's own money from the state treasurer by separate vouchers for each check drawn usually means a delay, however, of from two days to a week, frequently causing undue hardships to the claimant. It prevents absolutely the making of advance payments and furnishes the stock companies, who pay about 60 per cent of their compensation by agreement before an award is made, with an argument of strong human appeal against the fund. Arrangement should be made with the state treasurer for the deposit of limited sums to the credit of the commission from time to time, to be used for this purpose, or else the law should be amended so as to make it compulsory for the treasurer to make payments on state fund vouchers, even though a formal award has not been made. There is much to be said for making the industrial commission responsible for the moneys of the state fund, subject, of course, to the examination not only of the state insurance department, which supervises all insurance carriers, but of the state comptroller, who would have adequate check on any misuse of public finances. A representative of the claims department is present at all hearings, and if the award of a deputy commissioner seems questionable he appeals on behalf of the fund to the commission. The fund is not allowed to appeal to the courts, inasmuch as the commission believes that the fund, as a part of the commission, cannot appeal from a decision of the commission. The amended compensation law of 1916 allows the commission discretion in certifying questions involving the fund to the appellate division of the supreme court.[14] The claims department checks medical bills coming under policies that include medical treatment. If a bill is thought to be excessive, an itemized account is obtained from the physician and sent to the medical director for approval. His recommendations are sent to the physician, and if accepted the bill is submitted to the commission on a weekly medical bill calendar. If the physician disputes the recommendations of the

[14] Since June 1, 1916, the commission has certified two questions concerning the state fund. An amendment to the act in 1917 permits a policyholder of the fund to appeal to the courts.

medical director he is permitted to appear before the commission at the medical bill hearing.

The medical department consists of a "medical director," assisted by a stenographer. His work includes examination of "accident history" cards, to see whether the accident seems *bona fide,* and the probable duration of disability; examination of claimants to determine the extent and nature of disability; examination of medical bills; and education of employers and employees in safety methods and first aid. In routine examinations the medical department director follows the instructions of the claims department. His educational activities include inspection trips to plants of large policyholders of the fund three or four times a year during which he makes recommendations concerning safety equipment, and first aid lectures to employees. During the year ending June 30, 1916, he conducted four first aid classes to which all policyholders of the fund were urged to send representative workmen. About 200 employees, from approximately fifty establishments, attended and were given "diplomas."

The filing department consists of five employees who distribute mail and keep files for correspondence, policies, claims, and "accident history" cards. The office force consists of twenty-one stenographers and typists, an "underwriter," and a page. The fund is seriously handicapped in increasing its business by lack of a sufficient number of employees. As pointed out by the manager in his last semi-annual report, the fund is losing policyholders and money on this account. Inasmuch as it will from July 1, 1916, pay its own administrative expenses it should be given the thirty-two additional employees which its competent management deems necessary, including four claim investigators and four safety inspectors.

The workmen's compensation act provides for the formation, by employers in the various hazard groups, of associations for accident prevention, which may make safety rules, binding after approval by the commission upon all employers in the group, may appoint an expert safety inspector whose salary and expenses may be paid by the commission, and may make recommendations to the commission concerning the fixing of premiums for classes of hazards and for individual risks within the group. Exceptional opportunity for forming such associations is enjoyed by the state fund, but none has yet been organized, chiefly because the fund

has had insufficient employers in any one industry to create more than a few special insurance groups and because these few were already organized for trade purposes before taking out insurance in the fund. Aside from its regular safety inspection, the fund has done little to make use of these existing associations to develop special safety standards for the industries represented or to get them to carry on educational campaigns among their members. This kind of organization of the fund's policyholders for accident prevention could be correlated to great advantage with the code-making work of the bureau of industrial code, and could also be made an attractive feature of insurance under the fund.[15]

In this connection attention should again be called to the fact, already mentioned, that the policyholders of the fund under the present system have nothing whatever to say about how it shall be managed. This is a particularly serious defect, in view of the necessity, for competitive purposes, of maintaining the fund free from politics and from the danger of sudden change in administration. It has already experienced one complete change in the commission supervising it, which has proven beneficial rather than the contrary, but which indicates what might happen under a change of politics in the state administration.

Experience in other countries demonstrates that real democracy in administrative control over a state system of insurance consists in utilizing as a limited electorate those who contribute to its funds. Probably the most satisfactory way of accomplishing this end would be the establishment by the commission, without change in the law, of an advisory committee, composed of five representatives of policyholders, one representative of the industrial commission, and one representative of the state insurance department, to whom the manager of the fund or the commission could present matters of business policy affecting the welfare of the fund. Such a committee might well have much the same function as a board of directors except that responsibility for final action would still rest with the commission. The very existence of such a committee

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[15] In Ontario, Canada, where a similar system was instituted in connection with the state fund, these associations have been formed, are taking an earnest interest in all matters coming within their province, and have been of great service in causing the work to be carried on more economically and effectually.

would be an aid to the fund in a business way, and would serve as a valuable agency for assisting the fund in refuting the many insidious rumors circulated to discredit it. It would, furthermore, probably stimulate interest in organization of associations of employers for accident prevention.

Conclusions and Recommendations

In the two years of its existence the state fund has, despite the bitter and often unscrupulous opposition of private casualty companies, established itself as an efficient and economical agency for meeting the cost of workmen's compensation. While saving money for its policyholders it has maintained adequate reserves and has built up a large volume of business which is steadily growing. Further to increase its effectiveness the following recommendations are offered:

1. The state insurance fund should, by ruling of the commission, be made independent of the bureau of workmen's compensation and directly responsible to the commission; it should be given sufficient employees to enable it to examine its own claims, make field investigations, and conduct its business even more effectively; and it should be given the maximum freedom to compete with other insurance organizations, as long as the present policy of allowing competition by private stock companies is continued.

2. An advisory committee of not more than seven members should be established by the commission to consider all questions of business policy affecting the welfare of the state fund, and to make formal recommendations for action by the commission or the management. This committee should, preferably, be composed of one representative of the commission, one of the state insurance department and five representatives of the employers contributing to the fund, the last to be elected by the entire number of policyholders once each year.

3. The law should be amended at the earliest possible date to forbid the participation of private stock companies in the writing of compensation insurance.

4. The industrial commission should be given responsibility for keeping and handling the moneys of the state fund, subject only to audit by the state comptroller and examination by the state

insurance department. In lieu of, or pending, this change, arrangement should be made with the state treasurer whereby he will deposit from time to time a limited sum of money to the credit of the commission for use in making advance payments to injured employees of the fund's policyholders, or else the law should be amended to require him to pay out money on vouchers of the fund, regardless of whether formal awards have been made to cover such payments.

CHAPTER IX

Bureau of Employment

The recognition of the necessity for a state-wide system of public employment exchanges by legislative provision for a bureau of employment under the department of labor the year before the commission came into office, has already been mentioned. The commission found this bureau still struggling with the administrative problems of organizing its method of work and training its employees, but with branch offices in operation in Brooklyn, Syracuse, Rochester, Buffalo, and Albany. Subsidiary offices attached to these branches have since been opened in Williamsburg, Mineola (now discontinued), Auburn, and Dunkirk.[1] In addition there is a central administrative office in the commission's New York headquarters. No branch has been opened in the borough of Manhattan, because the city of New York operates a large bureau there with which the state system cooperates.

The commission has maintained general supervision over the bureau through one member assigned to responsibility for its work. On a few occasions the director has come before the entire commission to present questions of policy for its determination. Each member of the commission living up-state has endeavored to keep in touch with the branch office in his own community. No action has been taken by the commission relative to a policy for extending and developing the system of employment offices, further than to approve the subsidiary branches involving no addition to the original budget of the bureau.[2]

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[1] Since July, 1916, branches have also been established in Oswego and in the borough of Queens, New York City.

[2] In the commission's requests for appropriations in 1915 one $100 increase in salary for an employee of the bureau was asked for, but it was not granted. In the budget proposals for 1917-1918 the commission has asked for $12,000 for the establishment of two new offices, and $10,920 for additional salaries and for increases for employees in offices already established.

The person immediately responsible for administration of the bureau of employment is the director (salary $4,000), who was appointed by competitive civil service and who at the time of his appointment had just completed a nation-wide study of public employment exchanges for the United States Commission on Industrial Relations.

The staff in each branch office consists of a superintendent, one or more assistant superintendents, and from two to eight placement clerks, stenographers, and messengers. Thus the largest number of employees in any branch is ten, while the Boston office of the Massachusetts system had in 1914, when it was considered the best in the country, no fewer than eighteen. The holding of superintendentships by saloon keepers, and similar conditions found by the United States Commission on Industrial Relations in its study of the country's employment bureau situation, are not tolerated in the New York system. The staff of the central administrative office consisted up to July 1, 1916, of the director, an "assistant and stenographer," and a "stenographer," but the governor eliminated the stenographer from the 1916 budget.

The number and location of branches is restricted only by the limits of the appropriations of the legislature. With a comparatively slight increase in the present funds of the bureau, expansion would be easy because of the fact that a number of important industrial centers, such as Binghamton, Utica, Watertown, Jamestown, and Newburgh have backed up pressing requests for an office in their vicinity by offering to furnish the necessary quarters. In addition the bureau has repeatedly been urged to send trained men to the state farm bureaus in thirty-one counties to assist in filling the overwhelming demands of farmers for help. The sub-stations at Mineola and Auburn were, in fact, begun in this way.

All five existing branches are situated in or near the business sections of their respective cities, and with one exception are on the ground floor where they can be easily seen and entered. As a rule there are separate street doors for men and for women; in Brooklyn the lack of such separate entrances is recognized as deterring women applicants, but in the new building to which the branch is preparing to move this will be corrected.

The greatest of the numerous difficulties in the way of extending the bureau's usefulness has been the idea prevailing among the legis-

lators that it was created primarily for the relief of unemployment in times of depression. The wastefulness and suffering of individual search for jobs, or resort to commercial agencies, seems never to have been visualized by those responsible for appropriating funds.

It took several months in each community where a branch office is located to get not only employers but the workers themselves to understand that the function of the office was to secure positions for the most highly skilled as well as the unskilled.

Expenses of the bureau for the past two fiscal periods may be summarized as follows:

	Nine months ending June 30, 1916	*Fiscal year ending Sept. 30, 1915*
Salaries	$31,540.00	$27,778.50[3]
Rent	3,310.00	5,162.00
Furniture and equipment	313.93	5,019.18
Printing, traveling, stationery, postage, telephone and telegraph, etc.	4,628.85	3,693.55
Total	$39,791.38	$41,653.23

For the fiscal year 1916-1917 the sum of $40,520 is appropriated for regular salaries, but all other expenses are lumped with those for the rest of the department, and cannot be singled out.

The meagerness of the appropriation for salaries of employees is probably largely due to this same unenlightened conception of the function of the bureau. The annual salaries of the branch superintendents were set at $2,000, but the so-called "assistant superintendents" or registrars were allowed only $900 annually, and even as low as $600. It was only enthusiasm for the future possibilities of the work that induced a number of trained men and women to take positions at the low salaries offered. No provision for advancement has yet been made, and as a result eleven of the best qualified persons have left for other positions during the last year.

The large number of applicants that have registered with the bureau and the number who have given orders for help, is evidence that its usefulness has been established. In the first eighteen months of the bureau's existence, ending June 30, 1916, 20,092 employers placed orders for 72,480 workers. In the first nine months 49,554

[3] The full appropriation was not all used because of delay in opening branch offices. The salary allowance was the same for the second as for the first twelve months.

applicants for work were registered while there were 37,568 registrations in the second nine months period. The firms applying for help include some of the largest in the state.

There was not an actual reduction in the number coming into the offices however, because in the latter period casual laborers who could give no address were not formally registered. Twice as many positions were reported filled in 1916 as in 1915.

A comparison of the service rendered in the first nine months with that in the next nine months period under the commission follows:

	Nine months, October 1, 1915-June 30, 1916			*Nine months, January 1-September 30, 1915*		
	Male	Female	Total	Male	Female	Total
Persons applied for	29,360	20,264	49,624	13,698	9,158	22,856
Applicants registered	25,710	11,858	37,568	37,693	11,861	49,554
Applicants referred to positions	29,559	20,729	50,288	15,863	10,778	26,641
Positions reported filled	17,231	12,265	29,496	8,481	4,910	13,391

Registration of Applicants

The rule is for offices to be open from 8 A. M. to 5 P. M. but where the force is large enough to permit shifting, doors are opened part of the time at 7 A. M. for the purpose of sending out day laborers, cleaning women, and other casual workers. Registration hours are ordinarily from 9 A. M. to 4 P. M. The best equipped offices have four registration desks for men and two for women. The clerk at each desk specializes in one particular group of occupations, such as "Skilled help, clothing, metal, leather, and printing trades," or "Clerical, professional, and juvenile," but is occasionally shifted for the sake of experience. It is found that specialization makes for the most satisfactory placements, from the standpoint of both employer and employee. The need of interpreters is badly felt.

So essential to efficiency in an employment bureau is an adequate system of registrations and records that special care was given to planning this part of the work. Blanks from all public employment bureaus in this country and from England and Germany were carefully studied, their best features selected, and the resulting forms submitted for criticism to the card expert of a large filing device manufacturer and to several writers on unemployment. The applicant is first required to sign his name at the bottom of the registra-

tion card. This impresses upon him the importance of accuracy in giving the remaining answers relating to trade, age, experience, and the like, which are filled in by the clerk. If the applicant has registered before, the original card is brought up to date. On the back are spaces for recording the employer to whom he is referred, and the result. Applications by mail are permitted but not encouraged. References are not looked up, but are turned over to the employer to use if he wishes. Comparatively few employers, it is found, pay any attention to references.

To provide the quickest access to available applicants, registration cards are filed first by trade and then chronologically so that the latest application is first at hand. All applications are kept in the current, or "live," file until a job is found for the applicant, or for one month. At the end of a month, unless the application is renewed, it is assumed that the worker has found a position by some other means, and the card is removed to a "dead" file. This makes the number of cards in each class of the live file so small that the clerk can easily look through them to find a suitable man for a job.

Filling Employers' Orders

Orders from employers are received at any time during the day, and are filled by the same clerks who register applicants. Employers are urged to make known their wants by telephone or by calling in person rather than by mail, as in writing they are not likely to present all the necessary information. The branch superintendents state that placements are usually more satisfactory if made by the office staff, with its wider experience and the larger number of applicants in its files to choose from, than if the employer picks his own help from among those who happen to be present, as is sometimes done by persons desiring farm hands or domestic servants. Upon receipt of a request for help, inquiry is first made as to whether there are any workers on the floor capable of doing the job. If a good worker is found, he is sent at once. If none is found, or if those who present themselves do not seem very capable, the live file is gone over and if the person registered has left a telephone number he is called in that way; if not, a postal card is sent to his address asking him to come to the office. In emergency calls a worker is sometimes sent for in person. If a male worker is wanted, and no suitable person appears in the live file, the first dead file, which covers the previous quarter

year, is consulted. Other things being equal, the latest applicant is the first chosen, it being assumed that he is the most likely to be out of employment.

Employers' orders are kept in an "active" file, comprising all positions open, which is arranged in occupation groups corresponding to those in the applicants' live file, and an "inactive" file, arranged alphabetically by employers' names. Some firms use the bureau for filling all needs, from gatemen and floorsweepers to skilled workmen and highly paid clerical help, while many others have standing orders for workers in certain lines.

A leading reason for the wide acceptance of the state employment offices as genuine centers for offering and securing labor of all grades is that they are operated upon strict business principles. Fitness for the work is the sole consideration in sending out an employee. Skilled and even professional workers have learned that their qualifications are given full weight, and some branches are even acting as teachers' agencies, for which the need is severe. While the offices carry mainly able bodied workers, they also place to some extent handicapped persons and ex-convicts. The purpose of many a public employment exchange in this country has been frustrated by its becoming a headquarters for just this sort of labor, thereby repelling able workmen and employers who sought them. The New York offices maintain their standards by never sending a handicapped worker to a position which he cannot fill, or without informing the employer of all the circumstances. So successful is this policy that many partially disabled men are referred to the bureau of employment by the workmen's compensation bureau while their claims are pending there.

The offices make it a rule not to go into questions of wages asked or offered, leaving that to the individual workman and employer. Nevertheless, since most orders from employers state the amount of wages paid, valuable information on this point is accumulating, ready to be used by juvenile departments when organized.

The tendency of employers to ask for more workmen than they need has been discouraged. If an order comes from a new firm, and the office is not clear as to what is wanted, two or even three extra men may be sent, with the understanding that there is not room for all; but if the bureau has been serving the firm for some time it is usually able to pick out the persons to meet requirements. Some-

times, also, the office has no applicant who exactly meets the need, in which cases the two or three who come nearest are referred.

Juvenile Placement

The law provides that applicants between the ages of fourteen and eighteen "shall register upon special forms" and permits the registration of children at public or other recognized schools. The serious danger that this provision might encourage children to leave school was recognized by the commission, which has purposely delayed the establishment of juvenile departments in the branch offices until it could be amended. Furthermore the offices have been barely able to cope with the flood of adult applications nor have the employees of the offices been sufficiently adept to handle the peculiarly intricate problems of juvenile placement.

A bill was introduced in the 1916 legislature amending the law and making mandatory the establishment of juvenile departments, but failed to get out of committee because it carried an additional appropriation.[4]

In the absence of special departments for vocational guidance boys and young men who are undecided about what sort of work to enter are carefully questioned to ascertain their ability and inclinations. Many do not know what trades are open. The general endeavor is to encourage them to enter apprenticeship in skilled trades where they will have an opportunity to work up. Many men who apply for unskilled work are found to have had experience in skilled work, and are advised to return to it.

At the Brooklyn office women and girls who apply for clerical positions are given a short test in English, penmanship, arithmetic, and geography. Some female applicants are sent to the trade extension and commercial work rooms conducted by the municipal board of education for a "try out" to find for what lines they are best suited.

The first hand knowledge of industrial conditions and opportunities that comes to the employment office, is invaluable for purposes of vocational guidance. In failing to give the bureau the facilities necessary to establish juvenile departments and extend its work in the direction of vocational guidance, the state is not getting full return on its present investment.

[4] A similar bill, carrying an appropriation of $15,000, was enacted in 1917.

Dovetailing Seasonal Occupations

The bureau has begun to promote the dovetailing of seasonal occupations. In their visits to employers, agents of the branches inquire about rush and dull seasons, and the number of employees during each. One superintendent has sent to lumber and construction camps scores of sailors who would ordinarily congregate in the cities during fall and winter, and another has worked in together the custom and the ready made clothing trades. Consistent effort has been made to induce farmers to hire hands for the whole year instead of for a season.

Popularizing the Bureau

An essential factor in the success of a public employment bureau is popularization. To this end the New York bureau makes use of various avenues of publicity, though perhaps not to the fullest possible degree. Each superintendent endeavors to utilize the news value of events to keep his office in the public eye, and the central office sends out a monthly press bulletin which is extensively used. The director has written a number of articles, some of which have been published in pamphlet form; one on "The Function of Public Employment Offices" has been in special demand. Addresses before interested bodies, such as trade unions, granges, employers' associations, and women's clubs are also made by the director and several of the superintendents. Often when firms advertise for help in the newspapers a branch superintendent will call them by telephone and offer to supply the need, or postal cards offering the bureau's services are sent. Advertisements from the bureau are sometimes inserted in the newspapers. Through the efforts of a volunteer helper the Brooklyn office was able to secure space for 3,000 placards in the streetcars, elevated, and subway trains without cost to the state. The total advertising expense of the bureau for the nine months ending June 30, 1916, averaged about $115 a month. Larger expenditures for this purpose, to supplement energetic use of the many facilities for free publicity, should be permitted.

All these methods of publicity, however, would fail to achieve the desired result were they not followed up by personal solicitation. In spite of the smallness of the office staffs, most of the employees handling registrations are required to spend occasional half days visiting factories, office buildings, and other places of employment

in their vicinity, discussing with the managers their labor needs, and calling the bureau to their attention. "It has been found," states the director, "that this method secured better results than any other. An employer reads an article in the paper and has the idea that the office is probably a very good thing for somebody else, but, of course, is not fitted to his needs. It is only when he is visited that he becomes aware that the office can furnish any kind of a worker." While manufacturers and employment managers thus learn of the existence of the office, the office staff acquires valuable information about industry, and provisions should be made for an extension of this activity. Similar canvassing is done among the graduating classes of schools, especially trade schools, and trade unions. A potent factor in winning the favor of skilled workingmen as well as of employers has been the care with which the bureau avoided calling itself a "free" employment agency, as such a designation was found to create prejudice and aloofness because of the bad experience with earlier "free" bureaus, such as that established under the commissioner of labor statistics in 1896.

Advisory Committees

For each branch office the law requires the industrial commission to appoint an advisory committee composed of equal numbers of employers and employees. Up to June 30, 1916, only two such committees had been appointed, one in Brooklyn and one in Syracuse.[5] Among the questions already taken up by these committees are cooperation with city and federal employment offices, whether workers should be sent out of the state, attitude in particular strikes, questions to be asked of applicants in endeavoring to find out their working capacity, amount and details of the yearly budget, establishment of juvenile departments, and publicity methods.

Attitude in Labor Disputes

The bureau carefully follows the provision of the law requiring that in cases of labor disputes it must continue to accept orders for workers, but must post any statement received from either side relative to the dispute. Labor men have generally been very prompt in sending in notices of disputes, but employers have sometimes been

[5] As this report goes to press, committees for the Albany, Buffalo, and Rochester branches are in progress of formation.

negligent. Applicants have rarely taken positions after learning of the existence of a disturbance.

Cooperation between Branches

The law creating the bureau calls for cooperation between the branch offices. The administrative headquarters in New York acts therefore as a sort of clearing house. Daily reports from each branch are carefully gone over, and available openings in one office are placed at the disposal of applicants at any other branch. For machinists, building trades employees, hotel and restaurant help, and domestics, this transfer of information has proved especially helpful. From January 1, 1915, to September 30, 1916, the Brooklyn office, the only one for which statistics are compiled, referred to out of town positions, mainly in the occupations mentioned, 960 persons, of whom 577 secured places.[6] Through this same method it is hoped to expend the policy of dovetailing seasonal trades. On the first of every month, also, the central office issues the press bulletin already spoken of, which gives brief notes on the condition of the labor market gleaned from the reports of the branches, and statistics of registrations and placements, by occupational groups. General oversight is exercised by the director's visiting each branch once a month for whatever period may be necessary, by which means the superintendents are kept in touch with one another and valuable suggestions are circulated throughout the system.

The Brooklyn office of the state bureau works with the New York municipal bureau, the chief office of which is in Manhattan, under an arrangement by which each calls up the other in case it has an order it cannot fill. The same sort of cooperation is also carrried on with the federal employment bureau located in New York. Working agreements have also been made between the state branches and various local non-commercial agencies. However, to secure the greatest efficiency in transferring workers between localities and occupations as well as to obtain uniform statistics and more accurate knowledge of opportunities the state system's supervision over municipal employment bureaus in the state should be further increased. More complete centralization of control would not only improve the

[6] In its press *Bulletin No. 27,* dated March 1, 1917, the bureau reported that "one person out of every six in the 80,000 placements so far made was sent either from the city to the country or from one city to another."

service of all the bureaus concerned, but would facilitate cooperation with the developing national system.

Relation to Commercial Employment Agencies

In New York City alone there are more than 600 private agencies, collecting from applicants the huge sum of $2,000,000 annually in fees. In the rest of the state there are about 250 such agencies. The state bureau has no power to regulate these numerous agencies, except that they are required to keep registers of orders for help and applications of workmen and to furnish the director with such information from these registers as he may demand. Beginning July 1, 1915, effort was made in conjunction with the bureau of statistics and information to obtain monthly reports from these offices, but the figures were so incomplete and so unreliable that they were never used and after a year their collection was abandoned.

The present practice of leaving the licensing of private agencies entirely in the hands of municipal authorities seems to work badly in many respects. In order to evade license and regulation, agencies have been established in small towns having no corporate government. Each city has its own method of regulation and there is no uniformity of procedure. Even where there are high standards of inspection and regulation, municipal authority does not extend beyond the city limits and it is very difficult to prosecute when workers are sent to other parts of the state under conditions in violation of the law.

The licensing of all private commercial agencies in the state should be taken over by the industrial commission. In the larger cities it might be well to delegate the actual inspection and enforcement of regulations to the municipal authorities, but in every case uniform methods and rules, worked out by the bureau for the whole state, should be used.

Conclusions and Recommendations

One of the most important conclusions reached after a study of the bureau of employment is that it is seriously hampered by lack of funds. The services rendered by the public offices in five industrial centers show the need of extending them to cover the state completely. The Illinois bureau had an appropriation of $80,000 for 1916 and had three offices in Chicago alone with fifty employees,

more than in all New York state. Present plans for extending the California employment bureau system call for an annual appropriation of about $250,000. Concrete recommendations concerning the bureau may be summarized as follows:

1. The bureau should be allowed a larger amount of money, so that it can open additional offices, build up an efficient staff, and carry on adequate advertising and publicity.

2. Higher salaries and opportunities for advancement should be secured for the "assistant superintendents" (placement clerks).

3. The section of the law relating to juvenile departments should be amended so that it can be put into operation without danger of encouraging children to leave school. Funds should then be provided for specially qualified persons to handle this work in each branch.[7]

4. The bureau should be given control of licensing and regulating private employment agencies throughout the state.

5. The commission should make clear and emphasize its program for extending the bureau's work to cover the entire state and should solicit public support for this program.

6. The commission should keep before the public the fact that the bureau was not founded merely to meet an emergency of unemployment, but to perform a permanent function of social and economic value as great as that of any other part of the state government.

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[7] Action covering same ground as this recommendation has been taken by the legislature. See footnote 4, p. 444.

CHAPTER X

Bureau of Industries and Immigration

The bureau of industries and immigration is concerned with a wide range of functions having to do with the assimilation, protection, and supervision of immigrants arriving and residing in the state. Its creation in 1910 resulted from the investigations and recommendations of a legislative commission on immigration appointed in 1908. The year before this commission was appointed, immigration into the United States had reached the highest point it has yet reached—over a million and a quarter—and public interest had become aroused concerning the problems resulting from the presence within the state of such an increasingly large proportion of aliens. A third of the people in the state were themselves immigrants and the parents of a much larger proportion were born abroad. Aliens were landing in New York City at the rate of 900,000 a year, a quarter of a million of whom were settling within the state. This state was, therefore, confronted with the responsibility not only of temporarily receiving most of the foreign-born who came to this country, but of assimilating more of them than any other state.

The report of the legislative commission brought to light a great volume of frauds and exploitations practiced upon these foreign-born people. It emphasized the need for greater correlation of activities on the part of public and private agencies for their protection and preparation for citizenship. On the commission's recommendation the bureau of industries and immigration was established with functions broad enough to enable it to become the agency for inspecting, investigating, and promoting cooperative effort to meet these increasingly difficult problems.

A liberal appropriation for the new bureau was made at the outset and continued each year until two years ago, when the question began to be raised by leaders of the legislature and by the state administration, as to whether, in view of the reduction in the amount

of immigration since the war, there was any further need for the bureau. In two years the number of employees has been reduced from twenty-nine to sixteen, and the salaries of those retained have also been reduced. In his proposed budget submitted to the 1916 legislature the governor omitted this bureau entirely. This brought forth agitation on the part of the industrial commission and the head of the bureau for its continuance, on the ground that the falling off in immigration had comparatively little to do with the functions of assimilating and protecting the enormous resident population of aliens with whom the bureau was in constant contact. The legislature finally appropriated $26,000[1] for salaries of the bureau's employees in the fiscal year 1916-1917, which sum the governor cut down to $19,500.

Organization

The law creating the bureau provides that it shall be under the immediate charge of a chief investigator, subject to the supervision and direction of the industrial commission. Under the chief investigator there may be such number of special investigators at salaries of $1,200 and $1,500 and such other assistants "as may be necessary to carry into effect the powers" of the bureau. At present the force consists of one investigator in charge of the Buffalo office (salary $1,500), eight other investigators (salaries $1,200), and six clerical assistants. Seven of the investigators were born abroad and the other two are of immigrant parentage; among them fourteen European languages are spoken, including practically all those likely to be used by persons with whom the bureau comes in contact.

The headquarters of the bureau are in the New York offices of the commission. The work of the Buffalo office, known as the "western division," is performed by the investigator in charge who also visits Syracuse, Rochester, Utica and other cities up-state, and inspects labor camps during a part of the summer, and an assistant investigator whose time is taken up largely with stenographic work.

The principal items of cost for the bureau for the latest available fiscal year, ending September 30, 1915, are as follows:

[1] This was about $6,000 less than the appropriation for 1914.

Salaries	$34,890.60
Traveling	4,751.80
Stationery and printing	743.15
Telephone and telegraph	317.30
Furniture and fixtures	46.90
Stamps	12.00
Rent	3,160.00
Miscellaneous	147.32
Total	$44,069.07

The minutes of the administrative proceedings of the industrial commission show that it has taken formal action relative to matters of policy affecting the relations of the bureau with other governmental agencies and concerning certain violations of the interstate commerce law with which the bureau charged the railroads and steamship lines. Aside from this, the commission as a whole has apparently not given formal consideration to the program of the bureau's work.

Functions and Powers of the Bureau

The field of the bureau of industries and immigration as outlined in the law is so broad and so unrestricted that the direction and effectiveness of its activities depend almost entirely on the discretion of the commission and of the head of the bureau.

Its prescribed functions may be grouped under four main heads: (1) general investigation of "the condition, welfare, and industrial opportunities of all aliens arriving and being within the state," the bureau being empowered in such investigations to subpoena witnesses and examine documents; (2) promotion of cooperative effort among existing public and private agencies for improvement of conditions; (3) acting as a clearing house for the receipt of complaints or requests for advice and information from individual aliens; and (4) routine inspection (and licensing in the case of lodging houses) of certain places where immigrants are likely to be exploited or maltreated. They include such specific duties as investigation concerning deportable aliens in prisons, almshouses, and insane asylums; cooperation with federal and state authorities to facilitate their deportation; investigation of the demand for and supply of alien labor and of the occupations for which arriving aliens are best adapted and the devising and carrying out of such methods as will tend to

prevent or relieve congestion and obviate unemployment; study of the educational needs of aliens within the state and devising "methods for the proper instruction of adult and minor aliens in the English language and other subjects and in respect to the duties and rights of citizenship and the fundamental principles of the American system of government," and even the establishment and supervision of classes for the education of aliens; and investigation of "all complaints with respect to frauds, extortion, incompetency, and improper practices by notaries public, interpreters, and public officials, or by any other person or by any corporation whether public or private, and presenting to the proper authorities for action the results of such investigation."

General Work of the Bureau

Out of this broad scope of functions set forth in the law, the bureau has from the outset selected certain primarily routine activities around which to center its work. At present the entire force of the bureau, excepting possibly the chief investigator, is engaged for the greater part of its time in (1) inspecting and licensing lodging houses, (2) inspecting conditions at docks and ferries and railroad terminals, (3) inspecting employment agencies, (4) inspecting labor camps, and (5) investigating complaints.

One investigator in the New York office who happens to have had legal training makes out the daily assignments of work to each investigator and decides whether the complaints received shall be handled by the bureau or referred to other agencies. Among the other investigators there is little specialization or division of territory except that two investigators devote most of their time in the field to the inspection of docks and ferries and in the annual inspection of labor camps each investigator is given a particular territory to cover.

Study of the daily reports of the bureau's fifteen employees for four months,[2] supplementing six months' personal observation, indicates that six of the force including one investigator spend their time on clerical and stenographic work, while the chief investigator and two other investigators under her, spend most of their time in

[2] May, June, July, and August, 1916. The study had to be extended into the two latter months in order to cover the season when cannery camps were inspected.

administrative work. Consequently only six employees are regular field workers, and even they spend on an average about a third of their time in the office, and are obliged to consume another third in traveling or other unproductive effort in the field, leaving only about a third of their day for actual field work.

The system of recording work done is more cumbersome than necessary. The number of expensive blank forms of large dimensions could be reduced without diminishing the usefulness of the files. With a more efficient organization of the office procedure a much greater amount of work could easily be done by the same number of employees.

Inspection Work of the Bureau

During the fiscal year ending September 30, 1915, the bureau made 5,043 inspections, or an average of two and a half for each investigator for each working day. They were divided as follows:

	Number of Inspections
Lodging places	1,424
Docks and ferries	1,270
Labor camps	824
Steamship ticket agencies	424
Railroad terminals	336
Employment agencies	271
Immigrant homes	271
Miscellaneous	223
Total	5,043

From these figures it will be observed that over half the inspections—those of lodging places, docks and ferries, railroad terminals, and immigrant homes—are for the benefit of immigrants at the time of their debarkation or in transit, when they are particularly subject to exploitation. All labor camp inspections and about a fifth of those in lodging houses are made up-state, the rest of the bureau's inspections being confined to New York City. Except for the monthly visits to Rochester, Syracuse, and Utica by the head of the Buffalo office and the summer visits to labor camps practically no inspectional work is done outside New York and Buffalo.

In connection with such lines of industrial and construction work as canning and road making, where large bodies of workmen are

employed at a distance from any permanent living quarters, it is customary for employers to maintain camps where the workmen are housed and fed. These camps, in which a large proportion of the occupants are unskilled laborers of foreign birth, are often crowded, insanitary, and unsuitable for the accommodation of human beings. They are scattered throughout the state, the majority being either near the Hudson or west of Utica.

The industrial commission has authority to regulate the sanitation of labor camps connected with factories, but the only camp code, adopted in 1914, covers cannery camps exclusively. The state department of health has similar powers over labor camps in general. This department issued a sanitary code in 1914 which applies to all camps. The law creating the bureau of industries and immigration authorizes but does not require it to inspect all labor camps whether covered by the commission's code or not. About half those inspected by the bureau in 1915 were cannery camps, in which the bureau had authority to enforce the cannery camp code of the commission. In the other half, most of which were in connection with brickyards or road building, the bureau had no authority to compel the improvement of bad conditions.

When an illegal condition is found in a cannery camp a letter is sent to the proprietor telling him to remedy it promptly. If he fails to reply within a reasonable time that he has complied with the order another letter is sometimes sent him or a second visit made by the investigator. In the worst cases where a reinspection shows that no effort has been made to comply the evidence may be turned over to the commission counsel for prosecution. Since the organization of the industrial commission the bureau has prosecuted only two cannery camp violations. Because of the local influence of the owner, neither of the prosecutions was successful. When insanitary and injurious conditions are found in other labor camps, a letter is sent to the proprietor urging him to improve them, and the attention of the state department of health is called to the conditions. Thereafter in ninety-nine cases out of a hundred the camps receive no further attention till the following summer. The cannery camp code is now used as the standard for all camps and copies of it are sent to camp owners who request information on how to comply with the law. The 824 camps inspected in 1915 accommodated 37,807 persons, of whom 18,679 were aliens. During that year

sanitary violations were found in 202 camps, 368 letters were written in reply to which 108 camp operators promised compliance with the recommendations, and nineteen reinspections were made.

For every labor camp inspected the investigator files a seven-page form of general information. From these forms a list is annually prepared for the state department of education, showing under the name of each camp the number and nationalities of its occupants, the probable date of completing the work in connection with which the camp is maintained, and the nearest school.

Sanitary inspection of camps by investigators with no technical training is of limited value. It would seem advisable that efforts be made to get the state health department to cover these camps with its own inspectors.

The law establishing the bureau of industries and immigration requires that all places where immigrants or aliens are lodged except temporary labor camps and places conducted by philanthropic societies must be licensed, must take out bonds, pay annual fees, and make no charges in excess of the rates which they post in the lodging place and file with the bureau. The amount of the bond and of the annual license fee is graduated according to number of lodgers, the license fee varying from $5 to $25.

The bureau does not attempt to require all immigrant lodging places, as defined by the law, to take out licenses. Every fashionable New York hotel as well as almost every tenement house on the lower east side is an immigrant lodging place under the act, but only establishments receiving transient immigrants from the steerage are actually required to take out licenses. There is more effort to apply the law stringently to "transfer houses" (lodging houses whose representatives meet incoming ships or arrange for lodgers through European agents), than to other establishments.

In the nine months ending June 30, 1916, the bureau inspected 760 immigrant lodging houses, an average of eighty-four a month. Two hundred thirty-nine, or less than a third of these inspections, were made from the Buffalo office, the remainder in New York City. In this period eleven violations of the law were found, but no licenses were revoked. The chief investigator states that prosecution has not been found necessary. In inspecting a lodging house the investigator first sees whether copies of the license and schedule of rates are duly posted. He then examines the premises, and if he finds

more beds in a room than the air space warrants, or if the beds are too close together, he notifies the proprietor both orally and in writing to remedy these conditions. The investigators also report to the proper authorities illegal conditions which come under the jurisdiction of the police, health, or fire departments. The bureau instructs the proprietor of an unlicensed lodging house to take out a license. If he refuses to do so legal proceedings are instituted against him, but such action was not necessary in the eleven violations found in the nine months ending June 30, 1916.

Closely allied to the inspection of immigrant lodging houses is the inspection of institutions for temporary shelter which is also mandatory on the bureau. Under this clause of the law the bureau tries to make monthly inspections of twenty-nine immigrant homes maintained by philanthropic agencies in New York City in order to detect unhealthful conditions or improper practices. It also requires them to render monthly statements of the number of immigrants cared for.

In its inspection of docks and ferries the bureau does not station representatives at Ellis Island where the federal authorities are in control. It devotes most attention to places where second-class passengers land, on the ground that that is where the need for supervision is greatest. Two investigators devote most of their time to visiting steamship piers and have to make Sunday inspections, for which they receive no equivalent time off during the week. They mingle with the crowd within the customs lines and try to detect any attempts to defraud foreigners by money changers or by runners for hotels, lodging places, and transportation companies. They inspect the records kept by railroad runners of tickets issued and exchanged, and also attempt to supervise the activities of porters and hackmen operating outside the customs lines.[3]

The bureau makes an average of one inspection daily of railroad terminals. These inspections are similar to those of docks, and consist mainly of looking in or near the station for persons likely to exploit immigrants.

In the nine months ending June 30, 1916, the bureau made a total of 438 inspections of docks, ferries, and terminals, all but forty-five of which were in New York City. Forty-three complaints against porters, hack-drivers, push-cart men, and expressmen were referred

[3] Runners are licensed and supervised by the police department; porters, hackmen, and public chauffeurs by the bureau of licenses.

to the New York City commissioner of licenses. One complaint against a lodging house runner was made to the police department, resulting in the suspension of his license.

In the nine months ending June 30, 1916, it made a total of 1,073 inspections of private employment agencies, of which 137 were in Buffalo or other up-state cities. The licensing of employment agencies rests with local authorities. The bureau can stop improper practices only by reporting them to the local licensing authority who may refuse to grant a renewal of the license when it expires. In New York City the commissioner of licenses regularly inspects such agencies. The bureau, however, duplicates some of his work because the law requires it to secure a record of each applicant's nativity and length of residence in the United States, facts which the commissioner of licenses does not secure. The investigators also make written reports on significant conditions observed, and the commissioner of licenses is notified of any improper practices found. No tabulations are made of the information secured.

The law creating the bureau directed it to cooperate with other public authorities in regulating private banks which deal with "aliens and laborers." Responsibility for regulation of private banks in general rests with the state banking department, which has a large force of inspectors, but the chief investigator states that this department gives no attention to the malpractices especially affecting immigrants. The bureau takes up such matters usually upon complaint. In the nine months period above mentioned, the bureau made seventy-eight investigations of complaints relating to the transmission of money and referred twenty-five violations to the banking department. It made no special study of private banks although the chief investigator states the exploitation of aliens by such banks is a very serious problem in the state.

Assistance to Individual Aliens

Of the two branches of the bureau's work which consume most of its time, the other is assistance to individual aliens, including "advice and information" given within the office, and "case work," the official designation for visits outside the office on individual cases. While the legislative commission on immigration considered only the problems of immigrants who had been in the United States for less than five years, the bureau assists all applicants for help re-

gardless of the length of American residence. Probably most of the applicants have been in the United States for three years or more. The majority are natives of Italy, Poland, and Russia, in the order named.

In the nine months period ending June 30, 1916, the bureau received 498 oral and 444 written requests for advice and information. While the requests covered a wide range of subjects, they related chiefly to wage, accident, and other legal claims, naturalization, and employment. Of the total 942 requests, 275, or less than a third, were referred to other public authorities, 130 were referred to private or bonded attorneys, seventy-nine to the Legal Aid Society and only three to other organizations whose purpose is the assistance of immigrants. In the fiscal year ending September 30, 1915, there were over 2,200 such requests which was a considerable falling off from the 2,500 received in the previous year, before the beginning of the war. In the nine months ending June 30, 1916, there were 1,044 complaints received and taken up as "cases" for field investigation. In the 1915 fiscal year the bureau took up 2,357 "cases," an average of one each working day for each investigator. Of these over 70 per cent fell under the five heads of wage claims (669), "frauds" (331), labor camp cases (271), employment agency cases (246), and steamship ticket agency cases (174).[4]

The majority of the wage claims are for very trivial amounts.[5] During the fiscal year ending September 30, 1915, 179 wage claims, or a little more than one-fourth of the total number of cases undertaken, were settled through the bureau, the average amount involved being $10.39. The total sum recovered, $1,857.47, is about equivalent to an investigator's salary for nineteen months. The work involved in handling such cases included 299 investigations

[4] The 1915 period is more representative because a full year.

[5] Fairly typical is the claim of an Italian who had been in this country thirteen months and who applied for help in collecting $3 which he claimed was due him for two days' work in a candy factory. A typewritten statement of the facts was made, and the case was assigned to an investigator who visited the factory. He was advised that the man had worked twelve hours at 15 cents an hour, and that the company had at all times been willing to pay the $1.80 due, but that the man declined it. The investigator made a typewritten report and a typewritten letter was sent to the complainant who visited the corporation and received $3. He called at the bureau's office on January 13, 1916, and related the result, of which another typewritten memorandum was made.

and fifty-five "visits," 1,720 letters were received or written, 553 individual office conferences were held and 204 "miscellaneous actions," such as giving opinions and issuing receipts or subpoenas were performed. A rule was once established not to accept cases involving less than $1, but it is not adhered to.[6]

In the nine months ending June 30, 1916, the bureau referred one case of illegal medical quackery to the county medical society and twenty-one cases of illegal practices by lawyers to the county lawyers' association, out of which fifteen indictments and convictions were secured.[7]

Devotion of time to investigation of petty individual cases may be justifiable if constructive benefits to large numbers of immigrants result. The bureau should utilize the experience gained in specific cases as a basis for developing general activities affecting large groups. It should be receiving more requests for advice and for assistance and should be disposing of them with very much less cost in time and labor. In the first place a much greater proportion of such requests could be referred at the outset to other agencies. One person thoroughly familiar with the general field and able to speak four or five immigrant languages might be able to handle all the clearing house work with the help of a stenographer. Furthermore, letters or telephone calls could accomplish the same result in many cases where an investigator is now sent into the field.

Other Activities

Outside of routine inspection and following up individual complaints the bureau has made little use of its broad powers of investigating social and industrial conditions relating to immigrants. Since the commission was established it has, through the investigator in charge of the Buffalo office, made thirteen so-called "community surveys," chiefly of smaller manufacturing cities having a large foreign population.[8] A printed schedule formerly used for these

[6] For instance, in September and October, 1916, the bureau made two investigations, wrote two letters, and spent about $1 trying to recover from an express company an 85-cent prayer book for a Pole who was at the time a resident of Pennsylvania. When this study of the bureau was concluded, the bureau was waiting for certain information from the claimant in order to pursue the matter further.

[7] In the year ending September 30, 1915, thirty-four convictions for medical quackery resulted from the work of the bureau.

[8] Nine of these were made in the nine months ending June 30, 1916, and since July 1, 1916, seven more have been made.

surveys has been discontinued. Most of the reports of the investigations mentioned above are very brief and contain quotations from various persons interviewed as to the conditions, together with personal observations of the investigator. Most of the surveys must have been made in a few hours. The chief object evidently has been to advertise the complaint work of the bureau. With a few possible exceptions the investigations have not, however, been intensive enough to be taken as a basis for comprehensive community work.

Nothing is being done by the bureau toward aiding and directing the distribution of immigrants within the state, which may be considered one of its most important functions. No general studies of the social conditions of aliens in the state of any significance from the point of view of educating the general public, or from the point of view of furnishing a program for action by other agencies, have been made during the nine months' period covered by this study. The principal reason given by the head of the bureau for emphasizing the present lines of activity is that the reduction in the number of employees prevents taking up other work. The procedure followed in the bureau was, however, practically the same before the force was reduced.

Cooperation with other agencies in the same field, both public and private, is at a minimum. Especially is this true with respect to private agencies, concerning the activities of which the bureau has never attempted to gather together in a unified form any information.

Data collected by the bureau before the commission came into office concerning abuses by railroads and steamship lines in overcharging second cabin immigrants for exchanging "third class" railroad tickets purchased abroad for tickets entitling them to ride on other than immigrant trains, and concerning the notorious practice of "pooling" immigrants among the different railroads and sending them to their destinations by the most circuitous routes, was submitted to the Interstate Commerce Commission in September, 1915. As a result of this there were certain negotiations between the industrial commission and representatives of the railroads and steamship lines, lasting up to the end of this study. The outcome, the bureau head states, is the remedying of the two worst evils in this field; i. e., the issuance of "third class" railroad orders for tickets to second cabin passengers, and the collection of commissions on the

difference in the cost of the tickets exchanged. Nothing has yet been accomplished in regard to the indirect routing of immigrants.

Conclusions and Recommendations

The work described above does not measure up to the possibilities for constructive undertaking in the field covered by the law creating this bureau. It shows lack of vision and efficient administration. The broad functions laid down for the bureau at the time it was established are of no less importance now than then. The bureau can be of inestimable service to the state. To abolish it would be a step backward. What is needed, rather, is a complete reorganization and the preparation of a thoroughgoing program for its work in the future.

It is therefore recommended that:

1. The bureau should be completely reorganized by the commission and careful consideration should be given to working out a more constructive program for its activities in the future.

2. As a step toward developing such a program individuals and and representatives of various immigrant societies and agencies dealing with immigrant problems should be invited to a conference with the commission to discuss ways in which more effective cooperation between them and the bureau may be established and the usefulness of the bureau extended.

3. As part of the proposed reorganization the bureau should be provided with a secretary who can direct all routine work in the absence of the chief investigator and with at least one confidential investigator with special training and practical experience as a social investigator. If necessary the present force should be reduced to make this possible.

CHAPTER XI

Bureau of Mediation and Arbitration

The New York State Bureau of Mediation and Arbitration was created in 1886 as the result of agitation begun by organized labor in 1878, combined with a period of unusual industrial unrest from 1880 to 1886. The following year the powers of the bureau were broadened. Minor changes were made in its organization in 1897, 1901, 1907, and again in 1915, but the powers which it now exercises are substantially those conferred upon it by the law of 1887. These are three-fold and include mediation, public investigation if authorized by the industrial commission, and arbitration at the joint request of both sides to the dispute.

General Organization and Cost of the Bureau

The bureau is subject to the general supervision of the industrial commission, one member of which is directly responsible for overseeing its work. Questions of great importance are carried either to the supervising commissioner or to the commission as a whole, but in comparatively few instances has the bureau considered action by the entire commission necessary.

The third deputy commissioner (salary $5,000) is in immediate charge of the bureau, and is officially designated "chief mediator." With him are associated two "assistant mediators" (salaries $2,500), a "mediator of industrial disputes" (salary $2,800), and a "special agent" (salary $2,000). The first two mentioned have their headquarters in the Albany office of the commission and the latter two in the New York office, the chief mediator dividing his time between the two places as conditions demand. The supervising commissioner was formerly a manufacturer; the chief mediator, appointed by the commission, is a lawyer and former member of the legislature and was on the Wainwright commission on employers' liability. The two assistant mediators are trade unionists, the mediator had been connected with the Knights of Labor before he entered the labor depart-

ment in 1886, and the special agent, who has been an employee of the labor department for many years, has no direct connection with either unions or employers.

The cost of the bureau was as follows for the year ending September 30, 1915:

Salaries	$15,295.49
Traveling	2,150.80
Stationery and printing	386.54
Furniture and fixtures	156.52
Rent	550.00
Miscellaneous	3.50
Total	$18,542.85

The time spent on each intervention is difficult to estimate. It may vary from two or three hours to several weeks. Some interventions are dropped at the end of the first day or two and later renewed one or more times.

Bureau's Point of View

Throughout its history the bureau has emphasized the work of mediation rather than that of official public investigation or arbitration. It conceives its primary function to be that of bringing together the two parties to an industrial dispute and assisting them to work out a settlement. If a joint conference cannot be secured, the mediators attempt to act as confidential intermediaries. Only as a last resort does the bureau turn to investigation or arbitration. It is opposed to any measures containing compulsory features, such as the prohibition of strikes and lockouts pending compulsory investigation, or compulsory arbitration. The bureau's policy has always been to do its work quietly and to keep out of the newspapers, on the ground that the information it receives is confidential and that its diplomatic task of bringing the parties together would be hindered by publicity. It may be best to keep particular facts secret, but not necessarily the work as a whole. In thirty years the bureau has accumulated much valuable material on the causes and methods of settling industrial disputes. As a possible means of advancing industrial peace these data should be currently analyzed and given to the public, which the bureau does not now do.

Officials of the bureau state that in all interventions they try to

preserve strict neutrality between the parties. They feel that if they emphasized the improvement of working conditions or the setting of standards of employment, instead of trying to adjust particular controversies, they would lose the confidence of employers and employees and be able to make fewer settlements. For this reason also the bureau does not insist that the employer recognize the union, or maintain a union shop. It has, however, often expressed its strong belief in "mutual bargaining" and trade agreements, preferably containing provisions for boards of arbitration to settle future difficulties.

Increased Effectiveness of the Bureau

Before 1907 the work of the bureau was highly unsatisfactory. From the time it was organized until that year it intervened on the average in but eighteen disputes annually, or less than 5 per cent of those reported to it. It affected but seven or eight successful interventions a year, one of its handicaps being distrust on the part of employers because the commissioner of labor and his two deputies, who constituted the board of arbitration, were all trade union members. In 1907 the bureau was reorganized and two labor department employees without trade union affiliations were added to the staff. Since that date the bureau has intervened in an average of sixty-nine disputes a year, or 37½ per cent of those reported to it. The average yearly number of successful interventions has also increased to about twenty-eight. In the year ending September 30, 1915 (four months of which was under the industrial commission), the bureau intervened in forty-nine of the 104 strikes or lockouts reported, or 47 per cent, and in the nine months ending June 30, 1916, all of which were covered by this study, it intervened in ninety-four out of the 451 disputes reported, or in twice as many as in the whole year before, although only 21 per cent of the number reported. In the latter period the demand for labor on account of war orders produced a large number of brief strikes for increased wages, in which there was no need for mediation.

In recent years, at least, the classification of interventions as "successful" or "unsuccessful" has been based strictly on whether or not the settlement was unmistakably due to the bureau's own efforts. In the year ending September 30, 1915, twenty-seven out of the forty-nine interventions were classed as successful, and in the

nine months ending June 30, 1916, fifty-four out of ninety-four were classed as successful. Among the interventions termed unsuccessful are included a number of cases where the bureau intervened and then withdrew from the dispute upon learning that the parties were negotiating, and where a settlement of the strike occurred as a result of the parties' own efforts. That confidence in the bureau is growing is evidenced by an increasing number of applications for intervention,[1] especially in plants where the bureau has already helped settle disputes.

When the Bureau Intervenes

The bureau may intervene whenever it has knowledge of an actual or threatened strike or lockout. Throughout its history it has relied for this knowledge upon newspaper reports and chance information. It has found this method unsatisfactory, because interventions are less likely to be successful if made after a dispute has actually begun. From October 1, 1914, to June 30, 1916, it made only five interventions before the strike or lockout occurred. Three of these were classed as successful and two as unsuccessful. The number of such interventions is not large enough nor the results sufficiently striking to permit any conclusions from the experience under the industrial commission. Considering the whole period of the bureau's existence, however, about 10 per cent of its interventions have been made when trouble was only threatened. Fifty-seven per cent of these were successful, while only 37 per cent of those made after a strike or lockout had begun succeeded. More complete information about the existence of disputes would allow more early interventions. The bureau has, therefore, on numerous occasions recommended that city and county officials be required to notify it at once of threatened or actual strikes and lockouts. Although this recommendation has been repeated in almost every annual report for a number of years, no action has yet been taken on it. The industrial commission should present to the legislature such an amendment to the labor law.

In the great majority of cases the bureau intervenes on its own initiative, but sometimes it acts on the request of employees, employers, or some outsider. Out of the forty-nine interventions in the year ending September 30, 1915, thirty-seven were on the bureau's own initiative, ten on the employees' initiative, and two on

[1] See below.

the employers' initiative. In the nine months ending June 30, 1916, sixty-four out of the ninety-four interventions were on the bureau's own initiative, twenty-five on the initiative of employees, three on the initiative of employers, and two at the request of outsiders. In general, the bureau states, it tries to cover all strikes, but when necessary it selects for intervention the more serious strikes, those involving large numbers of workers, or causing much public inconvenience. But it sometimes intervenes in comparatively small disturbances which are near the offices or of which it happens to have full knowledge.

Mediation

Whenever a strike or lockout occurs or is seriously threatened the bureau is authorized to attempt by mediation to effect an amicable settlement. As soon as the bureau receives news of a labor controversy it sends to employers and employees blank forms to be filled out, which ask information about the industry affected, the cause of the strike or lockout, the number of employees involved, and other details. When the information has been received at the office, or sooner if necessary, a mediator goes to the scene of the trouble and by separate conferences with each party attempts to arrange a joint conference in which the specific grievances and demands can be discussed for the purpose of arriving at a settlement. At this stage of its work the bureau frequently finds it necessary to undertake the temporary organization of unorganized men in order to secure the selection of a committee that will authoritatively represent the men in conference.[2]

[2] The action of the bureau in a strike of 700 machinists and other shop workers in a large locomotive shop in Dunkirk, which occurred shortly after the period covered by this study, illustrates its procedure in cases where a joint conference is secured. The strike was called on August 10, 1916, and on August 11 the company asked the bureau to intervene. On August 14 two mediators visited the scene. On that day they saw each side separately, discussing the causes of the strike, the men's demands, and the position of the company on these points, with the manager of the company and with a committee of strikers and a union official. Late in the day they managed to arrange for a joint conference, to be held on the following day at the office of the plant. At the conference on August 15 the mediators assisted and directed the discussion. Members of the men's committee and two officials of the company took up the men's demands for shorter hours and higher wages. The conference was continued on the next day, the

When a joint conference cannot be obtained the mediator usually acts as a confidential intermediary between the parties. He tries to learn the maximum concessions which each side will grant, and with this information and suggestions of his own he approaches each party and attempts to make a settlement on this new basis. Most cases require considerable bargaining with the parties separately before a satisfactory settlement is at last effected. This type of mediation, used only when the first type fails, is beset with greater difficulties, but affords the mediator the opportunity to perform valuable service, since frequently he is in a position to suggest a settlement which will not only dispose of the particular case in question but which will serve as a basis for settling future disputes in the plant or industry.

A strike of 1,500 laborers in a Buffalo rolling mill which was called on March 13, 1916, illustrates the mediation work of the bureau when no joint conference is held. The president of the company asked the bureau to intervene, and on March 14 a mediator arrived and conferred with the president. The strikers, who worked ten hours a day at a minimum wage of 20 cents an hour, had asked for an eight-hour day and an increase of wages to 30 cents an hour. After discussion the president authorized the mediator to offer the men a wage increase of 5 cents an hour with a continuation of the ten-hour day. A joint conference could not be held because the company refused to meet any persons except former employees. On the afternoon of the same day the mediator had a meeting of strikers called. The strikers were partly organized by the Workers' International Industrial Union, which is an organization continuing the original principles of the I. W. W. and advocating peaceful methods. Most of the strikers could not speak English, and the mediator submitted the company's offer to them through an interpreter. The union organizers urged the men to refuse the company's offer and to hold out for a minimum wage of 30 cents an hour, and interrupted the mediator and his interpreter in their explanation of the company's offer. The offer was not accepted, but at the end of the meeting, which lasted into the evening, several

16th, when the demand for shorter hours was dropped, and the officials proposed an increase of 2 cents an hour to machinists and specialists. The offer was submitted to a vote of strikers on the same evening, was accepted, and the strike was called off. The strikers returned to work August 17 and were reinstated in their former positions.

men followed the mediator from the hall, and told him that they were satisfied and would return to work the next day. More than half the men did go back to work on the next morning (the 15th). By March 17, though the strike was never officially declared off, all the men had accepted the company's offer by returning to work.

The bureau offered its services in two of the most serious of the recent New York City strikes, those of the cloak and suit workers and the street railway employees, in which other agencies also tried to get a settlement. It approached both employers and employees in the garment strike, but could not induce them to confer. It intervened at once in the street railway strike, but the employers refused to consider the wage increase asked by the employees, and the two sides would not meet.

Investigation

Investigation of a strike or lockout may be conducted by the bureau only when it is authorized to do so by superior authority—formerly the commissioner of labor, now the industrial commission. Such public investigations are carried on by the "state board of mediation and arbitration," consisting of the chief mediator and two officials of the labor department designated by the industrial commission.[3] In making investigations the board has the power to subpoena witnesses, take testimony, and examine books, papers, and documents. The law does not require the board to publish its recommendations and findings of fact, but in practically every instance it has done so. However, the bureau has seldom sought or received this authorization to investigate a strike or lockout. Since the commission was established there have been three public investigations, two of which were authorized during the nine months ending June 30, 1916.

The first public investigation by the commission was in September, 1915, at Watertown, where a sixteen weeks' paper mill strike broke out again forty-eight hours after a settlement had been reached through the bureau. The purpose of the investigation was to ascertain why the agreement was broken. The entire commission sat taking testimony for five days, and finally reached the decision

[3] Two other employees of the bureau of mediation and arbitration are usually appointed, and at least two members of the commission have been present at all investigations.

that both parties had violated the agreement. Its decision had no direct result, but the men went back to work, largely because they were not able to keep up the fight. Since then the industry has become more prosperous and has increased wages, so that there has been no further trouble.

The next public investigation concerned a strike of electrical workers employed by contractors in Buffalo, early in May, 1916. Two hundred men went out, alleging violation by their employers of a trade agreement. One hearing was held, at which the board decided that both sides had broken their agreement. The commission thereupon recommended that the men return to work and that the employers reinstate them. By that time, however, many of the men had secured jobs elsewhere, and the employers had hired new forces, so that nothing came of the recommendation.

In the third case, forty-three conductors, motormen, and barn men employed by a suburban trolley line running out of Buffalo struck on May 24, 1916, for a wage increase and recognition of the union. The receiver of the company refused to grant the demands or to meet the business agent of the union, so that the bureau's effort to bring about a joint conference was ineffective. The industrial commission thereupon ordered an inquiry into the causes of the strike, which was held on June 19 and 20. At the inquiry it was brought out that up to the time of the strike the receiver had dealt with the employees collectively, that he had frequently met their business agent, and that he had a written contract with them covering terms of employment. On the other hand it appeared that due to the insolvency of the company the receiver's ability to raise wages was questionable. Shortly after the hearing the commission made a report recommending that the receiver deal with the strikers collectively and reinstate them in his employ, that the question of wages be referred to arbitration, and that the men declare the strike off and return to work on these terms Refusal of the receiver to recognize the union led to continuance of the strike.[4]

The possibilities of impartial and complete official investigation of important industrial disputes have by no means been fully tested in New York, either before or since the commission was established. The influence which well informed public opinion exerts in time of

[4] About September 1, 1916, the commission's recommendations were accepted and the line resumed operation.

strikes is very great, but the people of New York have rarely been so informed. This function of the bureau could be exercised much more frequently with beneficial results. The experience of the investigation boards appointed under this law points very clearly, however, to the fact that investigation after a strike has occurred is at best a very uncertain remedy. The most bitterly disputed issue in a strike is frequently a question of fact, such as the actual wage received or hours of work, concerning which there should be no ground for controversy. The exaggerated and unsupported statements made by both sides leave the public impotent and divided by *a priori* prejudices. The soundest basis for the exertion of public influence would be an official record of the essential facts collected before the strike was called.

Arbitration

In addition to its powers of investigation when authorized by the industrial commission, the board of mediation and arbitration may, upon written joint request of the parties to a dispute, sit as arbitrators. The parties must agree to continue work without a strike or lockout during the hearings, and to abide by the board's decision, which must be rendered within ten days after the completion of the investigation. As for investigation, the board may subpoena witnesses and documents, and a copy of its decision must be filed in its office and one served upon each party. The law also permits the formation of local boards of arbitration made up of one representative of each side who choose a third person for chairman, to which disputes may be voluntarily submitted.

In the nine months ending June 30, 1916, under the commission, arbitration was sought by the parties involved in only one case. This was a dispute in a Brooklyn shoe factory over the piece rate for folders in the fitting room for work on shoes more than seven and a half inches high. On January 27, 1916, the firm appplied to the bureau for a representative to act as umpire in settling the price. A hearing took place in the company's office February 7, at which the interested parties presented their claims. The mediator allowed a small advance over regular rates on the high shoes, and employer and employees agreed to these rates in writing.

Among the thirty-six disputes which the board was asked to

arbitrate during the thirty-six years between 1886 and 1915, only one instance is on record in which either party refused to abide by the decision. In view of the board's success in these occasional arbitrations, its discouragement of this type of work seems hardly justified.

Conclusions and Recommendations

Since the bureau of mediation and arbitration came under the jurisdiction of the industrial commission, no special alterations have been made in its methods of work, but the change seems to have strengthened the confidence of employers and employees in its impartiality. It continues to do good service, on a limited though increasing scale, in settling industrial disputes through mediation, though it has kept out of some of the most important recent strikes, where other agencies were endeavoring to bring about an adjustment. Under present conditions the bureau is unable to get complete or prompt news of strikes and lockouts. It has worked out the possibilities of official investigation and of voluntary submission of disputes to arbitration much less fully than those of mediation. Up to date it has not developed a broad and constructive point of view looking to the prevention of industrial disputes and it has not made use of its thirty years' experience to educate the public, employers and employees on the subject.

It is therefore recommended that:

1. The bureau should make greater use of its power of public investigation and should give more attention to encouraging the voluntary submission of disputes to arbitration.

2. The bureau should apply more strictly the principle of selecting cases for intervention on the basis of their importance to the public, and should use every resource at its command to protect the interests of the public whenever a strike continues to jeopardize public welfare.

3. The industrial commission should present to the legislature an amendment to the labor law requiring some definite official in each city and county to send the bureau reports of strikes and lockouts, and the bureau should make more active efforts to secure these facts by voluntary methods.

CHAPTER XII

Bureau of Statistics and Information

The bureau of statistics and information is the oldest part of the labor department. It was established in 1883 by a law providing for a "commissioner of statistics of labor" and a clerk, who were to constitute the "bureau of labor statistics." The creation of this bureau of labor statistics came, as has been described in Chapter I, three years before factory inspection was established, as the result of several years of agitation on the part of the organized laborers of the state for an official bureau "which should furnish the laborers with data as a basis for their appeals to the public in behalf of the various legislative measures they wished to put through."[1] Gradually the powers and duties of the bureau have been expanded until at the time of the organization of the industrial commission, in addition to collecting statistics and making investigations, the bureau tabulated figures of the work of other divisions of the labor department and was responsible for getting out most of the department's publications.

In the reorganization of the labor department in 1913, the law established five divisions in the bureau of statistics, namely, general labor statistics, industrial accidents and diseases, special investigations, industrial directory, and printing and publication. The law also provided that there might be such other divisions in the bureau as the commissioner of labor should deem "advisable," and soon after its formation the industrial commission used this power to create a sixth division of official bulletins and publicity.

The staff of the bureau consists of thirty-two persons. The administrative official in charge under the supervising commissioner is a chief statistician (salary $4,000), who is assisted by an assistant chief statistician (salary $3,500). The head of each division is a "chief" (salary $2,500), and the staff is about equally divided between "statisticians," "special agents," and "experts" (salaries

[1] Fairchild, *Factory Legislation of the State of New York*, p. 24.

$1,500-$2,000), and different kinds of clerical workers (salaries $600-$1,500). The main office of the bureau is in Albany, but the assistant chief statistician and five members of the division of general labor statistics are located in New York. The latest figures available on the cost of the bureau cover the year ending September 30, 1915, most of which was previous to the organization of the commission. These figures, which do not include such general charges as rent, are as follows:

Salaries	$55,484.66
Stationery and printing	6,486.28
Traveling	2,829.94
Furniture and fixtures	1,166.45
Stamps	17.18
Miscellaneous	21.47
Total	$66,005.98

The bureau is not able to organize its actual work, however, according to the divisions set up by the law. In 1914 the division of printing and publication—whose staff read proof, gave orders for printing forms and records as well as the publications of the labor department, and shipped publications—was taken out of the bureau of statistics and made a separate division directly under the former commissioner of labor. The $3,000 salary for its chief was eliminated from the 1916-1917 appropriation bill, and the only employees left are a clerk and a proofreader. Their work continues to be that of printers' clerks, the care of the stockroom in the Albany office, and distribution of publications and supplies, and for this these two employees have proven sufficient. The commission contemplates that in future the arrangements for printing all blank forms and stationery, formerly a considerable part of their work, will be made through the secretary's office, which has charge of the purchase of other supplies.

On account of additional work assigned to the bureau when the industrial commission was organized, the preparation of an industrial directory was temporarily discontinued. The statutes provide for an annual publication of this nature, but the officials of the bureau have questioned its value. The latest edition (1913) was called for chiefly by commercial agencies for advertising purposes. In dropping work on the industrial directory, the bureau gave up its former efforts to maintain a complete register of fac-

tories. By law a factory owner is supposed to register with the industrial commission on opening his establishment, but the requirement is not strictly enforced.[2] In actual organization, therefore, the bureau is made up of four divisions: general labor statistics, accidents and diseases (between which two the staff of the industrial directory division was divided), special investigations, and official bulletins and publicity.

The provision in the law for permanent divisions with mandatory functions interferes with flexibility of organization and makes it difficult for the bureau to adjust itself to the most important needs as they arise. Adjustment to new demands would be facilitated by striking out of the law the requirement that there shall be certain divisions and substituting a general clause authorizing the commission to establish whatever divisions are found to be necessary.

Division of Accidents and Diseases

The greatest change in the work of the bureau after the formation of the industrial commission was in relation to industrial accidents. Accidents in factories had been reportable since 1887, in mines and quarries since 1890, and in construction work and tunnels since 1910, and the bureau of statistics had been able to secure unusually full returns and had long tabulated them. But after the creation of the industrial commission its duties on the subject were much increased by taking over from the compensation bureau the statistical analysis of all compensation cases. Though the compensation commission had then been at work a year, it had been unable to touch this material.

After consolidation, employers were no longer required to send reports of accidents to both the statistical and the workmen's compensation bureau, as had previously been done, but a single report was sent directly to the workmen's compensation bureau. The report is there filed ready for reference in case a claim comes in,

[2] Because of inadequate appropriations for the bureau during the fiscal year 1916-1917, the commission decided to discontinue, in addition to the directory, the securing of trade union statistics and of monthly returns from private employment agencies. The information obtained from these sources has proved very unsatisfactory. In making out its program of work for 1916-1917, it tried to concentrate attention on the lines of greatest practical utility and highest value for the administrative work of the department, and those on which most reliable data could be secured.

a separate file being kept for each month.[3] Three or four months after receipt, all reports of non-compensable accidents, that is, accidents which seem to have caused less than two weeks' disability or which do not come under the compensation law, are ordinarily removed from the files. Only the remaining reports are sent to the bureau of statistics. Because of lack of funds nothing had been done up to June 30, 1916, toward tabulating the 80 per cent of accident reports which do not mature into compensation cases.[4] Yet the 20 per cent of accident reports handled amount to 63,000 yearly, and their analysis involves transferring twenty-eight different items from the reports to the cards used in the tabulating machines and the preparation of a dozen statistical tables showing the amount of compensation paid as well as information about the accident. In spite of using the force of the industrial directory division, on June 30, 1916, it had not yet been possible to complete the data for the first year of compensation cases.

Complete data about industrial accidents and the resulting economic loss is essential as a basis for intelligent accident prevention work by the bureau of inspection or other agencies, as well as for improvements in compensation legislation. It should not be overlooked, however, that this task, which has taxed the resources of the division, is technical statistical work for another part of the labor department, and not the collection of statistics from the field, with which the bureau was originally concerned. To expedite the work and to release a number of trained employees from mechanical jobs, the division needs several more clerks. The bureau has long wished to study the operation of the scale of payment for dismemberments, which is to a considerable extent a matter of guesswork, so as to suggest revisions on a more scientific basis. An addition to the staff would probably made this investigation possible.

Reports of certain kinds of industrial disease, which the law requires physicians to make, come first to the division of accidents and diseases. There they are tabulated and forwarded at once to the director of the industrial hygiene division of the bureau of inspection. In the absence of compensation for occupational disease, however, or of health insurance covering all illness, it is certain that

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[3] See p. 413 for further details.

[4] For the year 1916-1917 the commission has planned a limited tabulation of non-compensable accident reports.

comparatively few cases are reported. Only 123 instances of trade maladies covered by the law were notified in the year ending August 30, 1915, and 148 in the eleven months ending July 31, 1916. Prosecutions to impose the $10 fine provided for failure to report have not been undertaken. For a time after the reorganization of the labor department this division also filed policy records for the workmen's compensation bureau. This was found to be utterly impracticable and valueless, so that the commission secured an amendment to the law permitting it to discontinue receiving policies. When this work was given up the clerk who had been assigned to it was transferred, so that there was no increase in the available staff of the statistical bureau.

Division of General Labor Statistics

Like the division of accidents and diseases, the division of general labor statistics is in large part occupied with technical statistical work for other parts of the department. Its principal duties are the preparation of a monthly "labor market" bulletin, tabulation of the work of the bureau of inspection, and at present special statistical compilations for the state fund.

The preparation of a monthly labor market bulletin was the second large addition to the work of the bureau, made soon after the creation of the industrial commission. In 1914 the law establishing the bureau of employment provided that the bureau of statistics and information should publish "a bulletin in which shall be made public all possible information with regard to the state of the labor market, including reports of the business of various public employment offices."[5] The bureau at once worked out plans for collecting information to meet the requirements of the law, and began to publish the series in September, 1915. They contain comparative figures on the number of persons employed and the amount paid out in wages, obtained from 1,500 representative firms employing over a third of the factory workers in the state. The estimated cost of building construction carried on in the principal cities of the state is also given, and the whole forms a valuable index to employment conditions.

The tabulation of such a quantity of figures for timely publica-

[5] Laws 1914, C. 181.

tion[6] is necessarily a rush job. From the first to the twelfth of every month nearly the whole force of the Albany office of the division is concentrated on the task. Every month a number of employers fail to make returns promptly, and figures for their establishments are obtained through field visits by members of the division. At the Albany office also charts are prepared, showing in graphic form the figures for the annual fluctuations in wages and numbers employed.

About 3,500 copies of the labor market bulletin are printed every month and have been in great demand by employers, contractors, bankers, and other agencies interested in economic conditions. The contents of the bulletin are summarized in the regular monthly bulletin of the commission and in a press story which is used extensively by leading newspapers of the state. In the judgment of the chief statistician it is impracticable, however, to combine the labor market bulletin with the regular monthly bulletin, since the two appeal to somewhat different audiences.

An increasing amount of the division's time is taken in making tabulations of the work done by the bureau of inspection. Monthly and annual summaries are drawn up for the divisions of factory and mercantile inspection, and in addition a daily tabulation of the number of orders issued and compliances secured is made for the factory inspection division. These figures are published for the information of the public and are used by the bureau of inspection in checking and comparing the work done from month to month by the different supervising districts.[7]

The New York office at present carries on statistical work for the state fund, consisting of tabulation of wages paid to employees coming under the compensation law and losses incurred, which takes the equivalent of three persons' full time. The statistical departments of private casualty companies compile similar figures which are used to find the exact cost of doing business. Whether the tables should be made by the bureau of statistics or by the state fund itself is, however, a point worthy of consideration.

Besides these main lines of activity, the division helps with the statistics of compensated accidents, and makes special tabulations of the records of the department to meet current calls for informa-

[6] The figures for one month are published on the 20th of the month following.

[7] See p. 338.

tion. The Albany office maintains all the mailing lists of the department, and the New York office answers many letters and personal requests for information.

Division of Special Investigations

The main work of the division of special investigations is the preparation of special bulletins and field investigation. In addition it edits the annual report of the department, maintains a valuable reference library, is making a collection of safety literature, and answers the letters and personal requests for information on industrial matters which come to the Albany office. It is the only part of the bureau, under the present assignment of work, having an opportunity to make field investigations of industrial conditions, originally the prime function of the whole bureau.

Although the division does the final editorial work on the annual report of the department to the legislature, which is required by law, each bureau and division prepares the preliminary draft of its own report, and this is included with little or no change.[8] As a result, the reports are needlessly long and give the impression of a conglomeration of separate agencies instead of a unified department. Many bureaus also seem to be unable to get the proper perspective on their work, and fill their reports with eulogies or repeat much the same phrases from year to year. The complete preparation of the report by the bureau of statistics under the direction of the secretary of the commission from the raw material sent in from time to time during the year by the different bureaus would unify the report, probably reduce its size and cost, and save much time for the bureau heads. A draft of each section should, of course, be submitted to the proper official for suggestions and criticism. The size of the annual report volume should be further reduced by leaving out the section in which all the labor laws of the state are printed. This is done so that reprints of these laws, like the annual report itself, may be paid for out of the legislative printing fund. Sufficient money should be allowed the department to enable it to print the laws separately in a convenient reference volume and this wasteful practice should be discontinued.[9]

[8] Owing to delays in the firm which does the state printing the report of the industrial commission for the year ending September 30, 1915, was not published until January, 1917.

[9] The laws are omitted from the latest annual report of the industrial commission, covering the year ending September 30, 1915.

Ever since its organization the bureau has published from time to time the results of special investigations, which have, since 1913, been brought out as special bulletins, each devoted to a single subject. Ordinarily about 3,000 copies of such reports are printed, but as many as 25,000 copies have been issued of bulletins for which there has been a special demand. The bulletins are sent, according to subject, to different lists of names, and are also called to public attention through the monthly bulletin.

During the period from June 1, 1915, to June 30, 1916, the division brought out eight special bulletins. Three of these covered industrial accident and trade union statistics, which the bureau at that time collected periodically; four others, giving recent court decisions on New York labor laws, European regulations against occupational disease, New York laws of 1915, and a review of government publications on labor matters between 1913 and 1915, were drawn from documentary sources. The remaining report was an especially valuable one dealing with methods of "industrial accident prevention," and emphasized the results of safety campaigns in a number of large firms. Twenty-five thousand copies of this report were distributed among employers, many of whom asked for extra copies for distribution to foremen or safety committees.

The decision of the bureau to prepare several pamphlets on industrial safety in 1916-1917 seems, therefore, to be wise. In other states, notably Wisconsin, short circulars in simple language, covering a single industry or a single kind of safety work, have been found most effective. Placards and photographs to be put up in work rooms have also been prepared with good results.

With a larger staff of trained investigators in this division the bureau would be able also to take up investigations along other lines of great economic and social value to the state. For example, the public has been ignorant of the fundamental facts about working conditions, over which there should have been no ground for controversy, in most of the serious strikes in the state during the last year. An analysis of the causes of the apparent failure of the protocol in the dress and waist industry in New York City, for instance, might furnish a basis for settlements of industrial conflicts in the future that would be of service to the whole nation.

In preparing special bulletins the division has been handicapped

in a number of ways. The bureau is supposed to be responsible for the publication of all special bulletins, but they have frequently been brought out by other bureaus without having passed through its hands.[10] Nor do other bureaus of the department cooperate with the bureau of statistics by giving it material for possible bulletins. The division of industrial hygiene, created chiefly to make special research studies, had not up to June 30, 1916, furnished the bureau of statistics a single report of its investigations. The division of factory inspection in the course of its work is constantly accumulating valuable data on factory conditions, but it has furnished the bureau little or no material on accident prevention, industrial hygiene, and similar subjects. This policy should be changed, and every bureau should be encouraged to send in to the bureau of statistics and information all the material that may be useful for special bulletins. Moreover, special bulletins which individual bureaus desire to get out should in all cases be edited by the bureau of statistics and published under the name of the industrial commission, with a prefatory note giving due credit to those who have done the work. In order to simplify editorial work and to insure the collection of the material most useful to the public, the bureau of statistics, in turn, should have a share in planning all special investigations carried on by other bureaus and divisions.

In making field investigations for special bulletins, the division has been hampered by its inadequate staff and by lack of cooperation on the part of other bureaus. The bureau has had a constant struggle to secure and retain by adequate promotion investigators of the proper training and experience in the face of political manipulation, especially from outside the department, to get unqualified persons into these positions. Much of the time of the small staff of three investigators has necessarily been occupied in preparing for publication important documentary material, such as labor laws and court decisions.[11] In selecting subjects for in-

[10] The report on "Anthrax," prepared by the bureau of industrial hygiene without editorial supervision by the bureau of statistics and information, which appeared while this study was being made, is illustrative of this tendency.

[11] The commission wishes to bring out a much needed codification of state court decisions and commission rulings on the compensation law, but has no one free to do it.

vestigation by the division the bureau has felt obliged to give up some of the most important because some other bureau was regarded as occupying the field. Instead of this individualistic attitude, other bureaus concerned should cooperate and assist in planning such special investigations as may best be carried on by the bureau of statistics and information. If the bureau is to expand its function of investigation and research, it will be necessary to add several more well trained persons to the staff of the division.

Division of Official Bulletin and Publicity

The division of official bulletin and publicity was, as previously stated, created by the industrial commission. It is managed by a former newspaper man, who is the sole member of the division's staff and who prepares the monthly *Bulletin* of the commission and all general press bulletins. The chief of the division works under the supervising commissioner of the bureau rather than under the chief statistician—an illogical arrangement, but one which does not work badly in practice, since he acts as publicity man for the whole labor department.

The monthly *Bulletin* is intended to serve as a medium for interesting the public in the work of the department and for educating employers on the provisions of the labor law. It also contains all variations granted by the commission, publication of which is required by law, and important compensation rulings by the commission and the courts. The starting of this publication, which was due to the action of the industrial commission, marks a great advance in the educational publicity of the labor department. It does more than any other agency in the department to make employers and employees understand the purposes of the laws the commission enforces and the service the commission aims to render. Any criticisms that might be offered of it would be criticisms of minor questions of form and content, rather than of its effectiveness as a whole. For example, it might be made more readable by the use of more illuminating headings and sub-headings. Articles of more general interest should be printed at the front in larger type, and reference material, such as lists of variations, might well be segregated in a less prominent place.

Conclusions and Recommendations

A study of the work of the bureau of statistics and information under the industrial commission shows that, considering the size of its staff, it is being carried on efficiently and that its choice of work for the small fraction of time not filled with routine matters seems to be wise. For the most part it has been obliged to give up first hand investigation, and the collection of statistics from the field, for technical statistical work for other parts of the labor department.

The chief needs of the bureau seem to be the following:

1. The bureau of statistics and information, as the editorial agency for the whole labor department, should put into final form and prepare for press all department publications.

2. Other bureaus and divisions should continually provide the bureau with material for special bulletins.

3. Other units of the department should consult with the bureau of statistics and information in the planning of any special investigations, the results of which are to be embodied in reports or bulletins for the use of the general public.

4. Provided that adequate salaries are secured by a proper standardization of civil service for all technically trained employees doing high grade research work, the labor law should be changed, permitting adjustment of the internal organization of the bureau to the actual work to be done.

5. Several more clerks should be provided for routine statistical work and at least one investigator with thorough training in economics should be added to the force.

CHAPTER XIII

Legal Division

The legal division,[1] as organized under the industrial commission, consolidates in one office the legal work in connection with the prosecution of violations of the labor law proper and that in connection with the administration of the workmen's compensation law. This consolidation was not actually effected till after March 1, 1916, when the various bureaus in New York City were all brought together in the new commission offices.

Under the former workmen's compensation commission there had been a counsel (salary $6,000), two assistant counsel ($3,000 each) and an interpreter with legal training ($1,200). Under the old department of labor, there was a "legal branch" consisting of a counsel ($4,000), an assistant counsel ($3,000), a special agent ($2,000), and two factory inspectors ($2,000 and $1,200 respectively), the last three having had legal training. Under the industrial commission the new legal division is composed of the following legal staff:

	Salary
Counsel	$6,000
First assistant counsel	4,500
Assistant counsel at $3,500 (2)	7,000
" "	2,500
Factory inspector (with legal training)	1,800
" "	1,200
Interpreter (with legal training)	1,200

In addition there are six clerical employees whose salaries total $6,500, making a total annual salary budget for the division of $30,700.

The general function of the division is to act as legal adviser to the commission and to the heads of the various bureaus on any of the department activities. In actual practice, however, the work is very distinctly separated into the same two branches as formerly

[1] Although the term legal *bureau* is more generally used in the department it is technically a division and is so called in this report.

—prosecutions for enforcement of the labor law and assistance in administration of the workmen's compensation law. As head of the division, the counsel has supervision over all its work. Two assistant counsel, the interpreter, and one of the factory inspectors are engaged entirely in handling compensation cases. Prosecutions for violations of other parts of the labor law are handled by the first assistant counsel, assisted by one assistant counsel and by the factory inspector with legal training.

Compensation Cases

The work of the division in connection with compensation cases consists in writing opinions in cases that are referred for opinion of counsel; the preparation of "conclusions of fact" and "rulings of law" under the statute in cases in which notices of appeal from awards and decisions by the commission have been served; the service of such findings upon the parties in interest; the preparation of cases on appeal from the awards or decisions made by the commission; assistance to the attorney general in the argument of cases before the appellate court; collection of awards in non-insurance cases; collection of penalties for failure to secure compensation in methods prescribed by the statute; and a large amount of correspondence with parties who communicate with the commission relative to interpretation of the law or in reference to pending cases.

In the nine months ending June 30, 1916, 270 compensation cases in which appeals were taken from awards made by the commission were referred to the legal division. The following table shows the disposition of cases appealed to the appellate division of the supreme court during this period:

Appeals withdrawn	62
Claims disallowed on rehearing	5
Appeals held in abeyance in railroad cases pending the decision in case of Winfield *v.* New York Central Railway Company	79
Awards affirmed	61
Cases remitted to the commission for further findings	3
Awards reversed and cases remitted to the commission	2
Pending and undisposed of	42
Dismissals	2
Total	270

In addition to these, thirty cases were appealed from the appellate division to the court of appeals, seven of which are held in abeyance pending the decision in Winfield *v.* New York Central Railway Company and other cases pending in the United States Supreme Court.

One assistant counsel, one of the factory inspectors, and the interpreter spend practically all of their time on the collection of compensation awards. In the nine months' period above mentioned this work of collection consisted of the following:

Cases referred for collection of awards	940
Cases disposed of	692
Judgments obtained	202
Cases undetermined	248
Amounts collected	$12,801.69

Prosecutions

Although the work of the legal division in the prosecution of violations of labor law is not more voluminous than its work in connection with compensation cases, for the purposes of this report detailed analysis has been made only of the former.

Reference of Violations to Counsel

Cases which require prosecution for violation of the labor law or for failure to comply with the orders of the bureau of inspection are by that bureau referred to the legal division. A separate day is set aside by the legal division for receiving the reports of the inspectors of each of the five supervisory districts in New York City. In the case of orders the inspector's card, which contains a copy of the original orders issued to the individual or corporation, is stamped "Referred to counsel as to orders No. ——." It often happens that out of several orders upon a particular card only one or two will be referred to counsel for prosecution. From the information submitted by the inspector in each case the counsel fills out a card called the prosecution statement, which counsel signs when the case is accepted.

For the up-state cases some member of the staff of the legal division makes the circuit once every two weeks. He first visits the office of the department where he receives the reports of the inspectors and makes out prosecution statements for the cases accepted. These statements are mailed at once to the New York office where the complaints are made out.

Issuance of Summons and Complaint

From the prosecution statement prepared by counsel a stenographer draws up the complaint for each case in three copies. In New York City the original copy of the complaint is sent to the magistrate's court, municipal term; the second copy, called the service copy, is served on the defendant along with the summons; and the third copy is retained in the office of the legal division. The complaint which is served with the summons is not a sworn complaint but is designed merely for the convenience of the defendant, to inform him of the nature of the charges which he is summoned to answer. For the municipal term court in Manhattan, New York City, the legal division is provided with summons blanks signed by the judge, which are filled out and served directly on the defendant by the inspector. This practice has effected considerable economy in the inspectors' time as it relieves them of the necessity of going to court until the day of appearance. On that day the inspectors who have cases coming up for arraignment are on hand to swear out the complaints before the opening of court. In Brooklyn, however, the inspector is still required to have the summons made out at the court and thus is required to make at least two visits to the court in each case. For the up-state work two copies of the complaint in each case are mailed to the home address of the complaining inspector who delivers them to the court and swears out a warrant. The warrant is served by a regular police officer. Experience has shown that it is easy to secure appearance in court and it is seldom necessary to serve the warrant in person, the officer charged with the warrant often notifying the person by telephone that he is to appear in court on a certain day. In such cases no use is made of the second copy of the complaint.

Complaints are made out immediately for all cases accepted each week. In New York City the summons is made returnable upon the following Monday in Brooklyn, or Thursday in Manhattan, except where in the case of corporations a ten-day period must be allowed. In the up-state cases complaints are mailed at once to the various inspectors so that usually the appearance of all defendants in these cases can be secured on the next visit of counsel. Thus all cases accepted by counsel are cleared up from week to week and the only holdover cases are those which are prolonged by adjournment.

Cases in Which Counsel Advises against Prosecution

In certain cases referred to the legal division counsel declines to prosecute or advises against prosecution. These cases may be divided into two classes. The first consists of cases in which counsel finds that because of insufficient evidence or for other reasons of a legal nature a prosecution could not be successfully maintained. The other class consists of cases in which, although the facts afford a legal ground for prosecution, there are other circumstances which in the opinion of counsel render such action inadvisable. The reasons given by counsel for advising against prosecution in this latter class of cases are various, such as that the party had just gone into business and was unfamiliar with the law, that the occupancy was so small as to make the hazard negligible, that the party was about to move out, that the party had since gone out of business, or that the child employed was nearly sixteen or had in the meantime secured his working papers.

Up to the time of the Diamond candy factory fire in Brooklyn on November 6, 1915, the decision of counsel that a case should not be prosecuted was generally final. On December 3, 1915, however, the commission adopted a resolution to the effect that counsel should refer to the commission all cases in which he advised against prosecution, stating his reasons in each case. On December 11, 1915, counsel submitted to the commission a list of cases, which he "declined to prosecute." In passing upon these cases the commission voted "that the determination of counsel not to prosecute said proceeding until prosecutions of violations of the labor law in cases likely to be more dangerous to life have been completed, be approved" (December 17, 1915). In a letter to the counsel, advising him of this action, the supervising commissioner of the legal bureau explained that the commission did not wish to go on record as definitely refusing to prosecute any violation of the labor law, "but rather as admitting that all prosecutions cannot be immediately pressed and taking up those which are most in need of being pushed." It was also intimated that the papers in each case should be kept where they might be had for future prosecution "if time and circumstances warrant."

Shortly afterwards counsel adopted the following form for referring each list of such cases to the commission: "I recommend that the prosecution be held in abeyance until prosecutions for vio-

lations of the labor law which seem to present more hazardous conditions in factories are carried through to completion." On October 1, 1916, jurisdiction of fire hazards in factories in New York City was transferred to the local authorities,[2] and since October 17, 1916,[3] counsel has used the following form: "Counsel has advised against taking such action [prosecution] for the reasons stated."

Since the action of the commission on December 3, 1915, counsel has submitted to the commission a weekly list of such cases with a brief statement of the facts and recommendation in each, and the name of the assistant counsel making the recommendation. While the form of the general recommendation of counsel has been changed several times as already noted, the nature of the individual cases and of the reasons for the recommendation in each case has remained unchanged. In other words, counsel has based his recommendation in each case upon the merits of that particular case without reference to the relative importance of any other case. Even though for a period of nearly nine months the formal action of the commission consisted in its approval of the general recommendation that prosecution of such cases should be "held in abeyance," an examination of the records does not show that either before, during, or since that period, counsel has included among such cases any except those which in his opinion should not be prosecuted at all.

In December, 1915, the first month under the present procedure, thirty-eight cases were thus submitted by counsel to the commission, of which twenty-one related to illegal hours, child labor, etc., and seventeen related to construction matters. In January, 1916, sixty-six cases were submitted to the commission, of which fifty-eight related to child labor and illegal hours and only eight related to construction matters, principally exits and locked doors. In September, 1916, forty-three cases were submitted to the commission, of which twenty-one related to child labor and illegal hours in mercantile establishments, eighteen related to child labor and illegal hours in factories, and only four related to construction matters in factories.

[2] Laws 1916, C. 503.

[3] Though this report covers primarily the first thirteen months of the commission's existence, ending June 30, 1916, it was found necessary in a few instances in this study of prosecutions to include experience subsequent to that date.

In January, 1917, thirty-five cases were submitted to the commission, of which thirty-three related to child labor and illegal hours and two related to locked doors. These figures indicate that a great majority of cases thus referred by counsel to the commission are those relating to child labor and illegal hours and very few of them involve construction matters. The total number of cases referred by counsel to the commission from December 3, 1915, to January 31, 1917, was 687, distributed as follows:

1915	
December 3-31	38
1916	
January	66
February	44
March	43
April	109
May	85
June	47
July	17
August	23
September	43
October	39
November	71
December	27
1917	
January	35
Total	687

In most of the cases the recommendation of counsel has been approved by the commission. Out of 515 cases submitted by counsel during the ten months from December 1, 1915, to October 1, 1916, with a recommendation against prosecution, the commission ordered prosecution in only seven. One of these cases was held for the grand jury, in three a fine was imposed, in one sentence was suspended, one resulted in acquittal, and one was still pending at the end of November, 1916. In five of the cases submitted by counsel the commission approved counsel's recommendation on the condition that the violation should cease. In such cases the party is warned that the violation must cease or prosecution will ensue. Two cases submitted by counsel to the commission have been referred back to the inspection department. The persons interested are, of course, not notified that the commission has taken any action with reference to deferring prosecution.

Number of Prosecutions

The record of prosecutions from October 1, 1915, to June 30, 1916, shows that about 85 per cent of the cases arise in the first inspection district and only about 15 per cent up-state. During that period the legal division began the prosecution of 1,742 factory cases for the entire state, of which 1,343 had been closed and 399 were pending on June 30, 1916. Of the total number of cases begun, 1,112 related to fire protection, of which 782 had been closed and 330 were pending on June 30, 1916. During the same period 741 mercantile establishment cases were begun, of which 703 had been closed and thirty-eight were pending at the end of the period.

A comparison of the number of cases begun with the number of cases in which counsel advised against prosecution shows that during the nine months from October 1, 1915, to June 30, 1916, 2,483 prosecutions of both factory and mercantile cases were begun, and during the nine months from December, 1915, to August, 1916, inclusive, 465 prosecutions were "held in abeyance." In other words, counsel advises against prosecution in about one out of every six cases.

Records

On the back of the prosecution statement card is kept a record of the progress of the case in court and of its final disposition. Each case is numbered and these cards are filed according to number. When the case is finally disposed of the card is stamped "closed." A brief record of the prosecution in each case is also entered on another card called "Record of prosecution" showing the case number, the date action was instituted, the nature of the violation, final disposition with date, and the penalty. These cards are filed in alphabetical order. Factory case cards and mercantile case cards are filed separately.

Arraignment and Trial in New York City

The arraignment and trial of persons charged with violation of the labor law in New York City have been greatly simplified during the last few years as a result of legislation substituting the summons for the warrant of arrest, creating a special departmental court to hear all cases of this sort, and conferring on such court jurisdiction to try and finally dispose of the case.

The use of the summons has already been explained. A word about the new organization and jurisdiction of the magistrates' courts is essential to an adequate description of the arraignment and trial of these cases. Formerly the arraignments were before different magistrates in the various sections of the city. The magistrates had jurisdiction only to hear the complaint and hold the defendant for trial on a future day in the court of special sessions or to discharge him, as the case might be. The defendant still has the right to a trial before three justices in the court of special sessions, but a recent statute permits him to waive that right and in such case authorizes the magistrate to sit as a court of special sessions with power to dispose finally of the case.[4] In practice this right is waived in practically every case, and the number of cases where trial is insisted upon before the court of special sessions composed of three justices is so small that for the present purpose its consideration may be disregarded altogether. The same act which extended the authority of magistrates created the municipal term court.[5] This court has been organized in two parts, the first session of Part I having been held on March 23, 1916, and the first session of Part II on June 19, 1916. Part I is held in the Municipal Building and has jurisdiction of all cases in Manhattan and the Bronx. Part II is held at Court and Butler Streets, Brooklyn, and has jurisdiction of all cases arising in that borough. The other magistrates do not sit in this court except when necessary to relieve temporarily one of the magistrates regularly assigned to it. Each day of the week is devoted to the hearing of a particular class of cases, *e. g.*, prosecutions brought by the fire department, the health department, the tenement house department, or the industrial commission. In Part I Thursday is assigned to the industrial commission, and in Part II Monday. The advantage of such an arrangement is obvious. Not only is there a great saving of the time which the inspectors of the various departments must devote to appearing in court, but there is also a great gain in both the efficiency and the uniformity of the administration of the law because the judge assigned to this court soon becomes familiar with the technical and other perplexing problems involved not only in the labor department cases but also in analogous cases from other

[4] Laws 1915, C. 659, §8.
[5] Laws 1915, C. 659, §29.

departments. In the boroughs of Queens and Richmond the number of cases is not large enough to warrant the organization of a special court.

The arraignment and trial of a case are very simple. Sometimes, especially if the defendant pleads guilty, the whole proceeding takes but a minute. The defendant, who in answer to the summons almost invariably appears in person, is very briefly told of his right to time in which to secure counsel and witnesses and of his right to be tried in the court of special sessions before three justices, and is asked if he waives the latter right. As already stated practically every defendant does so and consents to have his case disposed of by the magistrate.

The cases thus tried before the magistrate may be divided into two classes: those based upon violations of omission, and those based upon violations of commission.

Violations in the first class of cases—those of omission—relate mostly to construction and fire or accident prevention, where something still remains to be done by the owner or tenant in order to comply with the law. In this class of cases a penalty is rarely imposed. It is very apparent that, whether properly so or not, the court in practice acts more as an adjunct of the labor department than as a separate tribunal for the administration of justice. In other words, when an owner or tenant fails or neglects to comply with orders relating to matters of construction and the department finds itself unable to induce compliance, the court, when resorted to, tries its hand at persuasion, and imposes a penalty only upon a very recalcitrant defendant. It is only an occasional defendant who disputes the allegation of non-compliance. Following the arraignment of a defendant there is seldom heard a word as to that question, but only a query from the court as to how much time is needed to finish the work, whereupon an adjournment is generally granted for the whole or part of such period. Not infrequently the same case is adjourned several times.

In Part I the magistrate usually asks the inspector if the hazard is great. If the answer is no, he is liberal in allowing time. If the answer is yes, he is apt to inquire a little further, judge for himself as to the hazard, and allow less time. It is, however, only in cases where the hazard is great or where a long time is necessary to complete the work that he is inclined to fix a time shorter than

that necessary to do the work and thus compel the defendant to come in and report progress. The attitude of the court undoubtedly is that if the defendant has reached or has been brought to the point where he will make an honest effort to get the work done a reasonable adjournment should be allowed. A property owner guilty of failure to comply with a provision of the law relating to the construction of his factory is not always looked upon as a criminal, and allowance is made for many contingencies such as delay on the part of the building department to approve plans, delay of contractors to complete the work, delay of materialmen to furnish material to contractors, or delay due to strikes or other such causes, unless it is shown that the defendant is seeking to impose upon the good nature of the commission or of the court.

Both magistrates regularly assigned to the municipal term court, in response to the question whether they considered the function of the court in this class of cases to be that of enforcing compliance rather than of punishing non-compliance, unhesitatingly answered in the affirmative. On one occasion, when the counsel for the commission objected to a rather lengthy adjournment, the magistrate said that he would not be used as a lash over the public to the extent of wrecking his health, but that if counsel showed him anyone who was deceiving him he would show how he would deal with him. Undoubtedly a large number of the excuses made to the court are *bona fide,* but it is almost impossible for either the court or the commission to be sure whether that is true in any particular case, and the net result probably is that some defendants get more consideration from the court than they deserve.

A number of cases which came up for the first time on September 14, 1916, were adjourned for as long a time as until November 9, the court making allowance for the fact that the labor department's final efforts to clear its calendar had undoubtedly caused a certain amount of congestion both in the building department, by which all plans must be approved, and among the contractors.

A few specific instances selected from several hundred cases observed during September and October, 1916, will serve to illustrate the operation of this court. They are fairly typical but no attempt should be made to draw general conclusions from any of them.

In a case where the lessee of a building owned by the city of

New York had agreed to make all repairs and had already started the work, an adjournment of ninety days was asked on the ground that the repairs were very extensive, but the court allowed only two months and directed the parties to appear at that time and report progress. Another case in which it was estimated that it would take three months to do the work was adjourned for only two months. In a case where the hazard was great the court said the work must be finished November 23 or a fine of $50—the maximum amount—would be imposed. In a number of cases where the magistrate made a definite promise of what he would do at a certain date he made a memorandum of it on the papers, and in one case he read to the defendant what he had written down. Problems are often presented much more difficult than the simple question of how long it will take to do the work. Sometimes the owner is financially unable to make extensive alterations, and in one such case the court set November 9 as the date upon which the building must be vacated or the owner would be fined to the full amount of $50. In another case, which had already been adjourned on one or two occasions, and in which the owners were still trying to arrange the matter with the mortgagees, who collected all the rents and were really the ones who should do the work, the court in allowing a further adjournment of one week in which the work should be commenced observed that it was apparent that more could be accomplished in that way than by imposing a fine. In an occasional case, however, the patience of the court is exhausted and a fine is imposed. Thus, where after much delay the work had been done, but was not satisfactory, a fine of $50 was imposed. And in another case where the orders had been originally issued in April but a bad hazard still existed, the court fined the defendant the full amount of $50 for each of the two buildings involved.

In Part II the principle upon which these cases are handled is much the same except that the magistrate there is able, because of the smaller number of cases, to grant shorter adjournments and thus can keep more closely in touch with the progress of the work. For example, in two successive weeks when there were 165 and 157 cases respectively on the Thursday calendar in Part I there were only thirty-five and thirty-nine cases respectively on the Monday calendar in Part II.

When the work is completed the defendant, if he has not already done so, pleads guilty and sentence is generally suspended. Prior to the Diamond fire, cases were sometimes discontinued when compliance had been secured, but on December 23, 1915, the commission by resolution decided that prosecutions should not be discontinued on this account.[6] The result is that while the bringing of a prosecution may seldom mean the imposition of a penalty it almost invariably means the recording against the defendant of a conviction for a misdemeanor and a first offense—a penalty in itself. The number of prosecutions which it is still necessary to bring indicates, however, that the deterrent effect of this form of penalty has not been great, except perhaps in reducing the number of second offenses.

The proportion of cases relating to factory construction has always been large, but it was unusually so at the time when the present examination was being conducted (September and October, 1916). This is explained by the fact that on October 1, 1916, jurisdiction of the construction of factory buildings in New York City and the prevention of fire in such buildings passed from the industrial commission to the local authorities, and an effort was being made by the commission to turn over the factory buildings of the city in as good condition as possible. All cases started before October 1 will, however, be prosecuted by the commission until they are closed. Moreover, the substantive provisions of the labor law relating to these matters remain unchanged except in so far as the regulations of the board of standards and appeals may differ from those of the commission, and the cases will still be brought in the same court, and presumably will be conducted in much the same manner, so that the importance of the consideration of this matter by those interested in the administration of the labor law is not lessened.

Violations in the other class of cases—those of commission—consist largely of the illegal employment of women and children. Here the method of treatment is, from the nature of the cases, necessarily different. There is nothing more to be done and so nothing could be accomplished by an adjournment. But it is significant that in this class of cases also the court has come to exercise a function which partakes more of the nature of administering

[6] On January 16, 1917, the commission rescinded this decision.

the law than of adjudging and punishing its violations. Fines are frequently imposed, but only in the more serious cases, as for example, the employment indoors of a weak, frail-looking girl or of a child of twelve. The children are in some instances brought into court and in at least one instance in Part II the court insisted upon adjournment of the case for a week until the child should be brought in and the court could judge for itself whether the violation was serious. But the employment of a husky boy of fifteen in outdoor work, as for example delivering merchandise, or a technical violation such as the employment without a certificate of a child who is entitled to one or who has one at home, is generally overlooked if it is a first offense, sometimes merely with the words "sentence suspended," and occasionally with the added warning that if brought before the court again a heavy fine for a second offense will be imposed. In short, a violation of the child labor law is punished or not, according to the judge's opinion of its seriousness. As the court recently remarked during the trial of one of these cases, "I take it that a good deal of the work of this court is educational now."

The attitude of the courts toward violations of the law regulating or prohibiting the night work of women, however, seems to be rather more strict, and the relative number of fines as compared with the number of convictions is greater.

There are also some other forms of offenses of commission, notably locked doors or smoking in factories, where a penalty is almost always imposed, at least in New York City. The whole number of such cases is, however, comparatively small.

Arraignment and Trial Outside New York City

Only about 15 per cent of the prosecutions for violations of the labor law conducted by the legal division during the last fiscal year (October 1, 1915, to June 30, 1916) arose outside of New York City, but as these cases are scattered throughout the state they necessarily take up more than that percentage of the time and efforts of the legal staff. One member of the staff makes a circuit of the state every other week, Monday being spent in Buffalo, Wednesday in Rochester, Thursday in Syracuse and Utica, Friday in Albany, and Tuesday being left open for other localities. After his visit to the local office of the commission he spends the re-

mainder of the day in court. This regular schedule is also supplemented by special trips to other places when necessary. In a general way it may be said that outside of New York there has not been the same difficulty in securing compliance with the provisions of the law relating to construction, etc., and as a result a larger proportion of the cases up-state relate to violations of other provisions of the law.

In Buffalo, labor law cases, except those involving children, which are taken to the children's court, are tried in the city court, one part of which is devoted to criminal cases; but no one judge is regularly assigned to this part, so that the counsel may appear before a different judge on each trip. In the other cities, however, the same judge usually presides in the court in which labor law cases are tried. In the country districts the cases are tried before a justice of the peace sitting as a police judge. It might be noted in passing that the jurisdiction of these courts to make final disposition of a case, if the defendant consents, extends to cases in which the maximum fine does not exceed $50, so that there has never been the same difficulty up-state which existed in New York City until 1915—the requirement of a preliminary hearing before a magistrate who had no power to make final disposition of the case.

In the cities a jury trial is seldom demanded, but in the country districts a jury is almost always demanded unless the defendant can be persuaded to plead guilty. Unfortunately, a trial before a country jury almost always results in acquittal, as the jury constitutes itself judge of both law and fact and is seldom very sympathetic toward the purposes of the labor law. Especially is this true in cannery cases in which there has been only one conviction *by a jury* in about ten years. In general it is more difficult for the commission to secure the imposition of fines in the up-state cases than in New York City.

In Monroe County, which includes the city of Rochester, the commission has also been somewhat hampered in the prosecution of cases in which a corporation is defendant, by a practice growing out of the interpretation of certain provisions of the penal code by the local district attorney's office, to the effect that a corporation can be proceeded against criminally only after indictment by a grand jury. The grand jury usually allows the defendant to pre-

sent evidence and in most cases fails to indict, so that it is almost impossible to secure the conviction of a corporation defendant. The commission is thus thrown back upon the prosecution of an officer or manager of the corporation, which is sometimes neither satisfactory nor equitable. The same interpretation and practice is followed in Schenectady, Oneida, Cortland, and Rensselaer Counties.

Conclusions and Recommendations

The outstanding question, suggested by the present attitude of the courts toward that class of cases arising under the labor law in which something still remains to be done by the defendant in order to comply with the law, is as to the soundness of the policy of the courts, in the great majority of such cases, of granting adjournments from time to time until the work is finished, and then suspending sentence. It is inevitable that a court which adheres to this now almost universal policy cannot avoid the responsibility of going into such questions as the length of time necessary for the completion of the work and the degree of hazard involved, matters as to which the legislature intended that the commission should be solely responsible and as to which the discretion of the court should not be substituted for that of the commission. While jurisdiction over a large number of the cases in the city of New York most directly affected by this policy has now been transferred from the commission to the local authorities the commission still has jurisdiction of construction cases outside of New York City and of accident prevention and sanitation cases within New York City. But in any event, the application of this policy to cases brought by the local authorities would be equally undesirable.

As has been pointed out, the courts act in this class of cases almost entirely with a view of inducing compliance after prosecution is brought rather than of punishing non-compliance. In other words, the courts very often begin over again the process of persuading or threatening the defendant, which is the proper function of the commission. The efficiency of the exercise of this duty by the commission has been greatly lessened by the realization on the part of property owners that they will still have another chance when they get into court.

This, then, is the unfortunate effect of this policy: that many

property owners evidently feel that there is no great risk in delaying compliance with an order of the commission, for they realize not only that the commission has no power of its own to impose a penalty for non-compliance—such as a tax department has to add a penalty for non-payment—but also that the court when its aid is invoked will ordinarily give the defendant another chance to comply.

It is urgently recommended, therefore, that the courts as soon as possible do away with this practice of allowing adjournments and suspending sentence in this class of cases. It would soon be generally realized by employers and property owners that an order to comply with the labor law means just what it says, and that if it is referred to counsel and a prosecution is begun no indulgence may be expected from the court. It is true that most of the defendants in this class of cases are fairly respectable citizens of a class very different from those who are generally brought before the judges of the criminal courts; and it is perhaps not surprising that the judges have come to look upon them as not really criminals and as deserving of greater consideration, especially in view of the additional fact that in many of these cases the work to be done is of a sort which the defendant himself cannot personally do but for the completion of which he is dependent upon contractors, sub-contractors, materialmen, workmen, and other persons and conditions over which he has no control. But when it is remembered that a delay or failure to comply in any one of these cases is likely at any minute to result in the death of many persons, it is clear that such delay or failure is entirely too serious a matter to be condoned as it has been by the courts.

This recommendation is addressed frankly and directly to the courts, and to every court which has jurisdiction of any of these cases. Especially in New York City the incidental results would be highly unfortunate if the municipal term court should adopt them and the court of special sessions should fail to back up this action. In such event it would not be long before the defendants would realize that it would be to their advantage to insist upon trial in the court of special sessions, and thus all the advantages which have already resulted from the establishment of a departmental court would be lost in this class of cases.

It is difficult to say whether the commission is to any extent

open to criticism for failure to protest earnestly and at all times against the continuance of this practice. But in all fairness it should be added that in several instances during the course of the present examination of the work of the courts, when counsel has protested against another lengthy adjournment in a case in which there had already been several adjournments, his request has received little consideration from the court; and in one very recent case, prosecution of which had been started February 23, 1916, and which on October 25 had already been adjourned eleven times, a justice in the court of special sessions severely rebuked counsel for the commission when he protested against a further adjournment until November 8, which the court granted. Indeed this latter case attracted the attention of several of the daily papers in which the court was quoted, with substantial correctness, as saying: "You are unduly harsh and unnecessarily severe in opposing these requests for adjournments and I want to tell you that you stand here in the same position as a district attorney or any other lawyer. You cannot force this court to take any attitude of undue severity by your actions."

Although construction cases are handled by the municipal term court on practically the same principle as that followed by the court of special sessions there is evidence that they are disposed of somewhat more quickly now in the municipal term court than formerly in the court of special sessions. The figures gathered for this study indicate that this is true; but they scarcely justify a definite conclusion, inasmuch as the municipal term court has not been in operation long enough to permit an entirely satisfactory comparison of the work of the two courts.

In the first place it is to be noted that in the months studied not one special sessions case was settled without at least one adjournment, whereas in the municipal term, Part I, over 13 per cent of the cases begun in April and 20 per cent of the cases closed in September were settled without a single adjournment. There were 28 of these cases in municipal term, Part I, and sixteen of them, or 55.5 per cent, resulted in the imposition of fines. A comparison of cases in which there were one or more adjournments shows that the court of special sessions granted more adjournments in the average case than the municipal term court, that the average length of each adjournment was shorter in the court of special

sessions than in the municipal term, and that the average duration of each case in the court of special sessions was from two to four weeks longer than in the municipal term. In comparing duration of cases it should be remembered that the special sessions cases had already been running, on the average, for two or three weeks at the time of first appearance in that court, and that the municipal term cases which were settled without adjournments are not included in computing average duration.

Under the present system of referring certain cases to the commission with a recommendation against prosecution, counsel is performing a function which does not belong to the legal division. While counsel certainly should not be under obligation to begin a prosecution which in his opinion cannot be sustained by the department, neither should he be called upon to "weed out" those cases in which, because of their relative unimportance, or other circumstances not of a legal nature, prosecution is inadvisable. In other words the responsibility for selecting the cases which *deserve* prosecution should lie solely with the inspection bureau; whereas the responsibility for determining the cases in which the evidence will *support* prosecution should lie with counsel.

An examination of a large number of cases in which counsel has advised against prosecution has failed to disclose any in which the violation was of such a serious nature as to make his recommendation seem unwarranted. It should also be noted that as long as the present method of referring cases to the legal bureau is continued, it will be necessary for counsel to pass judgment on the advisability of prosecuting certain cases; first, because the inspection bureau apparently does not exercise sufficient care in eliminating the cases which do not deserve prosecution, and, secondly, because under the present practice counsel is the only official of the department who has an opportunity to consider all the cases from the point of view of a uniform state-wide administration of the labor law. The responsibility of making the administration of the labor law uniform does not, however, rest upon the legal bureau; and the work of each bureau should be made to correspond to its responsibilities.

There are many cases in which the circumstances of the offense scarcely justify the imposition of the minimum fine of $20 now fixed by §1275 of the penal law, and yet in which the suspension

of sentence is scarcely a sufficient warning. This is especially true as to violations of the provisions relating to child labor and to women's hours of labor, where the defendants are often comparatively ignorant foreigners who do not fully understand the court proceedings and think, because they have not been punished, that their cases have been dismissed. The judges are loath to impose a penalty of $20 upon a poor and ignorant foreigner guilty of a first offense; but if the minimum is stricken off so that a penalty of a few dollars might be imposed in those cases in which sentence is now suspended the warning to the defendant would undoubtedly be much more effective and more conducive of future compliance.

As has already been pointed out the number of cases in Part I of the municipal term court is entirely disproportionate to the number of cases in Part II; thus in two consecutive weeks, on the days devoted to the industrial commission, there were 165 and 157 cases respectively on the calendar in Part I, while on the corresponding days there were only thirty-five and thirty-nine cases respectively on the calendar in Part II. In Part I it takes the entire day, sometimes with only a very brief adjournment for lunch, to dispose in the most hurried way of the calendar for a day; while in Part II, although a much greater time is devoted to each case, the calendar has never run over until the afternoon. The law should be amended so as to permit an equalization of work among the magistrates of the municipal term court if the board of magistrates finds it advisable.

In accordance with the conclusions above stated it is recommended that:

1. In order to strengthen the hands of the commission and increase the respect that should be accorded to its orders, the courts, in dealing with construction and other similar cases in which something still remains to be done by the defendant, should gradually but steadily reduce both the number and the length of adjournments, and at an early date cease to allow any such adjournments or to suspend sentence, thus driving home to all persons affected the realization that unwarranted delay in complying with an order of the commission will no longer be tolerated and will result in imposition of the penalty as soon as the commission takes the matter into court.

2. All cases referred to the legal division should be promptly

prosecuted unless the evidence is insufficient to support prosecution. Any question as to whether there are reasons other than those of a legal nature rendering prosecution inadvisable should be adequately considered and finally determined before the case is referred to the legal bureau for prosecution.

3. Section 1275 of the penal law, which provides the penalties for violations of the labor law, should be amended by striking out of the provision for the penalty for a first offense the words "less than $20 nor," so that it will read "for a first offense by a fine of not more than $50."

4. Section 95a of the inferior criminal courts act of New York City should be amended so as to enable the magistrate assigned to Part 1 of the municipal term court to be regularly assisted by another magistrate of that court in disposing of the cases coming before Part 1.

CHAPTER XIV

Civil Service

The industrial commission is confronted with no more difficult nor important administrative problem than that of securing competent employees and of maintaining conditions that will encourage these employees to honest and efficient service. The act creating the commission follows the language of the state civil service law and requires that all its employees, except three deputy commissioners, a counsel, and the secretary of the commission, shall be "in either the competitive or the non-competitive class of the classified civil service." That is, no further "exemptions" from the civil service law are allowed. All appointees, with the five exceptions named, must pass a competitive examination, unless the civil service commission determines that a competitive examination is impracticable and allows one or more candidates selected by the department head as particularly qualified for a given position to be examined individually. In practice, however the civil service commission allows no position under the industrial commission to be classified as "non-competitive." Whenever a vacancy occurs under the civil service the industrial commission requests from the civil service commission a list of persons eligible for appointment to the position. If no eligible list has been established by a previous examination, the civil service commission advertises that on a certain date an examination for the position in question will be held. Applications for entrance to the examination must be filed before a given date. Very seldom are those entering the written examination required to have previous experience or training. The questions for the written examination are prepared by the chief examiner of the civil service commission, who may secure the assistance of others either in the state service or outside. He may also secure outside help in grading the papers. After the papers are graded those who have passed the examination are listed in the order of their grade. An oral examination, however,

may be held before the eligible list is finally prepared, and the final rating determined by weighting the grades made in the two examinations. The first three on the list are certified to the department, which has the privilege of appointing any one of these three. If there is more than one position to be filled the candidate at the top of the list is entitled to be certified three times before he is dropped. After a candidate has received his appointment neither his title nor his salary may be changed without the approval of the civil service commission, and his removal is also subject to the civil service commission's rule. Appointments may be made provisionally for a limited period, and the experience thus acquired is sometimes counted toward advanced civil service rating to the disadvantage of other competent candidates.

The old labor department was considered a serious offender in evasion of the civil service law. Under the previous state administration the civil service commission had been subjected to great pressure from political and trade union sources to induce it to exempt numerous positions on the ground that more "practical" persons could be secured without written examination. A large number of positions created in the reorganization of the department in 1913 had, as a result of this pressure, combined with general laxity in administration of the civil service law by the former civil service commission, been declared exempt and allowed to be filled on the basis of political or personal affiliations. Among these were important administrative positions in factory inspection and positions in the division of industrial hygiene. When the industrial commission was established all exempt positions in the former labor department and in the former workmen's compensation commission were restored to the competitive class, but the persons who held them were allowed by the statute creating the commission to retain office and were given full civil service protection without taking an examination.

Defects of Present System

Notwithstanding the increased checks placed upon the spoils system by more rigid and effective administration of the civil service law, the present civil service system is still hampered by serious administrative defects. In its report issued in March, 1916, after intensive study of the whole question,[1] the New York Senate

[1] *First Report of the Senate Committee on Civil Service,* New York State, 1916.

Committee on Civil Service declared that although there were many instances of highly competent and thoroughly trained officials and employees rendering much more service to the state than could be required of them, still "in no department of the state government do the employment conditions approach the standards adopted in private practice." While fully as striking illustrations of the shortcomings of civil service could be found in other departments, and while at this time at least the industrial commission is not entirely to blame for their continuance, the following five defects revealed by the senate committee's investigation are particularly in evidence in the labor department:

1. Lack of proper qualifications and preliminary training of employees.
2. Inadequate and inequitable system of advancement and promotion.
3. Irregularity in rates of pay.
4. Lack of standards as to amount and quality of work to be expected of employees.
5. Multiplicity of fictitious and unnecessary titles, with resultant confusion and administrative difficulties in assigning and controlling the personnel.

Lack of Preliminary Qualifications

Persons interested in labor law administration have been impressed with the contrast between the high standard of professional training and experience required of candidates for appointment as factory inspectors in European countries and the extremely low standards in America.[2] The lack of adequate standards in New York state is illustrated by an analysis of civil service records of 110 factory inspectors given by the senate committee. These inspectors were engaged in work requiring not only a clear understanding of the intricate provisions of the labor law and industrial codes, but also a practical knowledge of factory conditions, building construction, mechanical equipment, and industrial sanitation. Only fifty-four out of the 110 had been previously engaged in occupations which would afford familiarity with these subjects. Two had been in occupations that might give them some special qualifications for factory inspection, one being a physician, the

[2] See United States Bureau of Labor Statistics, *Bulletin No. 142*, "Administration of Labor Laws and Factory Inspection in Certain European Countries," George M. Price, 1914. Also International Labor Office, *First Comparative Report on the Administration of Labor Laws: Inspection in Europe*, 1911.

other formerly an agent of the United States Department of Commerce and Labor. The other fifty-four had apparently no experience or training to meet the difficult technical problems that constantly confront a factory inspector. Among them were thirteen clerks, four stenographers, three salesmen, two paper hangers, two merchants, two letter carriers, and one in each of the following occupations: manager of a sewing machine agency, undertaker, matron of a jail, manager of a motion picture theater, solderer, collar examiner, shoe fitter, sample shirt waist worker, accountant, auditor, lawyer, and foreign language correspondent. One reported his previous occupation as "unemployed" and another as "none." Obviously the ability to pass a written test, largely on the provisions of the labor law, cannot be considered satisfactory evidence that persons with such lack of practical experience are equipped to make technical inspections of factories.

Inadequate Promotion System

"Perhaps no factor," states the senate committee, "has done as much to lower the working efficiency of state employees as the haphazard and irregular advancement and promotion system, which has given too little recognition of the competent and too much protection and recognition of the incompetent." This criticism applies no less to the labor department than to others in the state government. No employee ever knows definitely what he may expect in the way of increased salary or promotion, however efficient he may become. Unless a vacancy occurs and he passes a competitive promotion examination for appointment to it his salary can be raised only by getting the finance commmittees of the legislature to approve an increase in appropriation for him. Employees with political backing in the legislature have not hesitated to make use of it to secure advancement for themselves, even over the protests of administrative officers of the department, while others more competent than themselves got no advancement. It is even common for them to attempt to influence the commission itself by appealing to their local political leaders to intercede with the commission in their behalf. Furthermore, employees have been promoted from one salary grade to another without change in duties or responsibility. The uncertainty of adequate recognition for ability and efficient service is constantly driving competent employees out of the department into private

businesses, while the less competent remain. In the last two years the workmen's compensation bureau has lost nine of its best claim examiners and the state fund one of its most valuable employees to private insurance companies, simply because they could be given no definite assurance of higher pay. The bureau of employment has, in the same manner, lost a number of its most competent employment registrars in the last year and has been compelled to train new and inexperienced persons to take their places.

Irregularity in Rates of Pay

It would be difficult to estimate the extent to which competent employees in the department are discouraged from exerting their best efforts by the fact that others less competent, less industrious, and with less responsibility get more pay. There are a number of instances of persons doing the same type of work, even in the same bureau, whose salaries differ by $800 to $900 a year.

Though rates of pay in the state service generally are higher than a reasonable standard, in the labor department they are more frequently too low. Salaries above what should be given for the type of service rendered are found principally among those doing clerical and non-technical work. On the other hand, the salaries allowed for factory inspectors, registrars of employment, trained statisticians, boiler inspectors, and others, are in general lower than is consistent with efficient service.

Lack of Standards of Work

The following statement by the senate committee very aptly applies to this department: "For the most part individual efficiency has not been properly developed through systematic supervision and control. It is found that officials responsible for the work of a division, section, or office rely too much on indefinite impressions as to whether or not an employee's work is satisfactory and do very little to develop the individual workmen to the maximum of their capacity." There is scarcely a bureau head under the industrial commission who does not insist that it is impossible for all the duties of his bureau to be carried on without more employees. In most cases this is probably true, but in at least one of the bureaus which most often repeats this plea the application of adequate standards dealing with the amount and quality of ser-

vice expected from its employees would enable the bureau to do much more work than it now does.

Fictitious and Unnecessary Titles

A number of fictitious and unnecessary titles that have no relation to the duties performed have grown up. Some of these, such as "detective" and "confidential agent," have already been eliminated by the industrial commission, but many still remain. In the bureau of statistics and information, for instance, the meaningless terms "special agent" and "expert" are used to describe both statisticians with professional training and ordinary clerks with no training at all. The titles "assistant superintendent," "filing clerk," and "stenographer" are all applied to persons doing the work of a registrar of employment. In the workmen's compensation bureau persons acting as examiners of compensation claims have the titles "claim examiner," "assistant claim examiner," "underwriting clerk," "clerk," and "interpreter." On the other hand, the title of "underwriting clerk" with a compensation of $1,200 a year is borne by persons doing all sorts of clerical work including the duties of a stenographer and typist.

All these defects have been factors in weakening *esprit de corps,* much more in some bureaus than in others. The large element of human interest in the work itself combined with inspirational leadership on the part of the bureau head have, in several of the bureaus, in a measure offset the deadening influence of service under present conditions. But in other bureaus petty jealousies and factionalism consume a vast amount of energy and thought that should be expended in advancing the bureau's work.

Need for Civil Service Specifications

One of the prime needs for overcoming the defects described is the adoption of standard civil service "specifications" such as were developed, covering every kind of position in the department, by the senate committee after months of intensive study. These "specifications" first define the work to be done by the incumbent of a position; second, define the basic requirements of training and experience which he must have to be eligible to enter the examination for appointment; third, determine the range of compensation that he may receive while in the position and annual

increments to which he is entitled conditional on efficient service; and fourth, provide for a definite line of promotion to positions of greater responsibility and higher range of compensation in the same field of work. Of particular value are the preliminary qualifications proposed for factory inspectors, boiler inspectors, mine and tunnel inspectors, industrial code examiners (now called deputies of industrial code), medical inspectors of factories, and statisticians, and salary ranges are recommended that will enable the state to secure and hold competent persons.[3] Although no steps have yet been taken by the civil service commission for the general application of these standard specifications, the industrial commission should insist on their application as far as possible to all new employees selected for it. Without any change in the law the proposed initial requirements of training and experience can be applied, the standard titles can be used, and the salary rates can be made to conform with those specified.

Need for Improved Examinations

Although the application of initial requirements of training and experience, such as those recommended by the senate committee, is the most needed step toward improving the selection of new employees, there is much that can be done toward making the examinations themselves more practical. The responsibility for accomplishing this rests, of course, primarily upon the civil service commission but the industrial council is specifically directed by the labor law to aid the civil service commission in selection of employees for the industrial commission.[4] Furthermore, the industrial commission itself can do much to improve the standard of entrance tests by offering suggestions to the civil service commission on the subjects that should be covered in examining candidates. Until standard specifications are adopted, the industrial commission should, before requesting an examination to fill a vacancy, secure from the bureau head a complete definition of the duties of the position to be filled, together with a full statement as to the experience, training, and knowledge that the bureau head believes the incumbent should have. Oral examinations following the written examination afford a means of making the test

[3] These specifications are given in detail in Part IV of the senate committee's report. Those covering factory inspectors are to be found on pp. 413-422.

[4] See p. 308.

for technical positions more practical and should be insisted upon whenever possible.

After candidates have successfully passed the civil service tests and have been certified for appointment, the bureau head should be given opportunity to interview the candidate before final selection is made. Action by the commission on appointments within bureaus should be chiefly in the nature of checking up on the judgment of the bureau head.

Need for Stricter Use of Probation Period

Another way in which the industrial commission itself may greatly improve the effectiveness of civil service is by making the three months' probation period provided for in the civil service law a real probation period. Only on the rarest occasion has a new appointee ever been rejected after his first three months expired. The fact that he is on probation is usually completely lost sight of. So exceptional a thing is it to subject a new appointee to any kind of rigid test to determine his fitness for permanent appointment before the end of this period that bureau heads frankly admit they allow incompetent appointees to become permanent rather than "stir up a row" by objecting to them. Furthermore, the nominal probation period is not looked upon as a period of training. New appointees are, generally speaking, "broken in" to their jobs rather than systematically and intelligently trained for them.

It is recommended that a service committee appointed by the industrial commission as suggested below[5] prepare for adoption by that commission a general order to govern the procedure to be followed by bureau heads in training new appointees for the work they are to do and in reporting on their fitness for final appointment before the end of their period of probation.

Need for Service Records

The determining factor in the so-called promotion examinations now required for advancement under the industrial commission is almost always the candidate's service rating coupled with credit for seniority. It is therefore a matter of great concern to an employee that his work be fairly rated.

[5] See p. 517.

As a means of securing these service ratings the rules of the state civil service commission require that "In every office there shall be kept in a form which may be prescribed by the civil service commission continuous and comparative records of the work and conduct of the persons employed therein." The civil service commission, however, no doubt because of an inadequate force, has put this rule into effect only nominally. It has not prescribed any uniform system of service rating, nor has it undertaken a supervision of the methods developed by the separate state departments. The matter is of such great importance, nevertheless, that for its own employees the industrial commission should take the initiative in proposing a definite system of service rating. Up to the present it has been content with the haphazard methods permitted by the civil service commission. Admission is freely made by the heads of various bureaus that these methods have resulted in many specific cases of injustice and the general feeling is that it is not possible to rate fairly and justly even with the best intentions because of fundamental defects in the system itself. Five of these defects are obvious and must be remedied before justice can be done.

One is the preparation of records only at the time of a promotion examination. Not until after the civil service commission has rated the written papers in a promotion examination is the industrial commission required to submit service ratings for those candidates who have qualified. Although it is known in advance that these ratings must be submitted, no attempt is made to anticipate the need by having the records prepared periodically. As a result, the preparation of the required ratings is treated as a separate question each time it arises. The civil service commission submits a list of names for which ratings "on a percentage basis" are required. Portions of this list are referred to the various bureau heads concerned for their recommendations. Under this method the time for rating is just the time when there is the most incentive for discriminating between individuals. The fairest minded rating officer cannot but be influenced by the fact that his ratings will directly influence the result of a specific examination. The period for which the rating is given is too long for a complete review of the employee's work. The official's judgment is necessarily colored by his latest impressions, and these may

be unconsciously influenced by his likes and dislikes, and most of all by a natural desire to see the employees of his own bureau rated higher than those of another.

A second defect is the absence of definite uniform standards for rating. No such standards are prescribed by the civil service commission. The industrial commission has not devised any for its own use. Consequently the various rating officers follow their own ideas on the subject. Their judgment is governed by unwritten personal standards, and 80, 85, or 90 per cent have as many values as there are rating officers. It has been found difficult enough to harmonize these different viewpoints in organizations where definite printed standards and instructions exist; it is impossible when the individual ratings are made independent of all guidance. If one person rated all the employees who competed for promotion this lack of definite uniform standards might not result in injustice. But promotion examinations are not restricted to separate bureaus. They are usually open to all employees in the New York City or up-state offices respectively who are otherwise qualified. Under such circumstances employees under a bureau head who rates liberally have an unfair advantage over those under a bureau head who marks strictly. Uniformity of standards is essential if competition is to be equal.

A third defect is the absence of any systematic organization for review of ratings. Even under a system in which ratings are prepared in accordance with definite uniform standards it would not be possible to secure complete justice between employees except by a systematic review and equalization of ratings. In the absence of such standards the need for an efficient rating organization is a matter of prime importance. The methods used in assessing for taxation purposes furnish an interesting parallel. Local assessments are reviewed by county and state boards for the purpose of equalization, of bringing them all under the same standard so that each district may bear its proper relative share of the tax burden. So it is necessary that the efficiency ratings given by officers be reviewed by a board or committee to make them comparable. At present the secretary of the industrial commission receives the list of ratings from the various bureau heads and as a rule reviews them informally. In one case, an examination for supervising inspector, he acted on a committee whose other two

members were a commissioner and a deputy commissioner. But this committee was organized only for the single occasion. The usual practice is for the secretary to work independently, from time to time calling bureau heads into consultation. The percentage marks submitted by the bureau heads are not accompanied by supporting material. Some modifications are made in the ratings before they are sent to the civil service commission, but the methods followed cannot bring to the attention of the secretary enough information for a satisfactory review.

A fourth defect is the absence of supervision and control. Not only is there no adequate control of the rating within the industrial commission itself, but the civil service commission also maintains no supervision over the efficiency records. Ratings are accepted without investigation. In one case an employee appealed directly to the civil service commission, asserting that he had been rated unfairly. The only action taken was to refer the matter to the industrial commission for its attention. In the phase of the promotion examination where personal judgment plays such a considerable part, it is important that every possible safeguard be provided to prevent mistakes or unfair rulings. Such safeguards can be established only by the maintenance of close supervision over the ratings by both the industrial and the civil service commissions. In the absence of strict supervision by the latter it is all the more important that the industrial commission so organize the system that the interests of the employees may be properly safeguarded.

The fifth defect is the absence of publicity. Publicity of efficiency records has two results: (1) It disposes of any grounds for dissatisfaction among the employees, and (2) it stimulates employees in their work. Under present conditions no time is given for publicity of ratings. They are now not required until actually needed by the civil service commission, and the time for preparation is then so short that even the bureau heads rarely see any except their own ratings. The employee naturally distrusts what is done in secret, and as he does not see the results of his work as measured by his efficiency ratings he has no constant incentive for harder effort. The industrial commission itself cannot have the same assurance of the fairness of the ratings as it would have if there were no complaints after full publicity.

The difficulties caused by the above defects cannot be met by dispensing with efficiency ratings altogether or by refusing to make the discriminations required by the civil service commission. It is generally agreed that to base promotion solely on written examination would probably result in as great injustices as would basing it solely on unsupervised efficiency records. It is entirely proper that the experience of an employee in the department where the promotion takes place and a consideration of the value of his work should be a determining factor in the case of both salary increases and promotions. The situation must be met not by decreasing the importance of the efficiency record but by adding to its importance. If it were understood that the records of service were to have greater weight in promotion examinations, and in addition were to be used in the selection of employees under the "one in three" rule, in the lay-off of employees for unsatisfactory service or lack of funds, and in other administrative matters, their importance would be recognized by the employees and rating officers, and the commission could count on full cooperation in working out a better system.

New York City, for example, has developed a very comprehensive system for rating service, which is uniform for all departments under the jurisdiction of the municipal civil service commission. The records are used not only as a factor in promotion examinations, but for increases within grade and by executives in the administration of their departments. They are also of value in budget hearings in support of requests for increases. The principal features of this system are:

1. Submission of records every four months.
2. Development of definite uniform rating standards. The final rating is built up by rating principal factors of an employee's work separately and subtracting from the result demerits for lateness, absence, and misconduct. Definite printed instructions have been prepared for rating officers.
3. Establishment of a definite rating organization culminating in a personnel board composed of the principal bureau heads and a representative of the department head.
4. Constant supervision by the municipal civil service commission which retains the right to accept, modify, or reject departmental ratings.
5. Complete publicity.

In New York state the public service commission has developed an efficiency record system which the state civil service commission

has approved and which furnishes a precedent to the industrial commission for independent development of service records. In promotion examinations the records of that commission are even accepted in many cases without written examinations. Thus the eligible lists are made up in the order of the employees' comparative efficiency ratings.

In view of the defects in the methods employed at present and the urgent need for an effective system of rating efficiency, it is recommended that the industrial commission appoint a committee, of which the secretary should be a member, to prepare a set of regulations to govern the rating of efficiency. The regulations should include a classification of employments for rating purposes; a statement of factors and sub-factors with relative weights to be used in ratings and of the standards on which ratings are based; a consideration of the possible use of existing reports as supporting material for the service records; a rating organization to include a departmental personnel board for the review of ratings, the hearing of appeals, and the further development of the system; the designation of rating officers, bureau committees, etc.; and provisions regarding the use of the records for increases, promotions, and administrative purposes. Particular attention should be given to the problem of supervising and controlling the work of rating officers who are outside the New York office. The results of this committee's work should be submitted to the industrial commission for its approval, and by it to the industrial council. The latter in its capacity as adviser to the civil service commission should submit the plan as finally approved to that body with the recommendation that it be made official. The civil service commission should be urged to make the proposed system uniform throughout all the departments of the state, though its failure to do so will not impair its value to the industrial commission.

Conclusions and Recommendations

While the industrial commission law has put an end to the evasion of civil service requirements which once characterized the labor department, numerous administrative defects still mar the working of the system and hinder the selection and retaining of competent employees. The more important needs may be summarized as follows:

1. The industrial commission should insist upon the application of standard initial requirements of training and experience, such as those recommended by the senate committee on civil service, to all future appointees.

2. As far as possible, salary rates should be adjusted to the standards recommended by the senate committee, and increases in compensation and promotions should follow the specifications contained in that committee's report.

3. The industrial commission should appoint a committee within its own organization to prepare a set of regulations for service rating, and the results of the committee's work should be submitted to the commission for approval and by it to the industrial council.

4. The suggested committee should also prepare for adoption by the industrial commission a general order to govern the procedure to be followed by bureau heads in training new appointees for their work and in reporting on their fitness for final appointment before the end of their period of probation.

5. Before requesting an examination to fill a vacancy, the industrial commission should always secure from the bureau head a definition of the duties of the position to be filled, together with a full statement as to the experience, training, and special knowledge that the bureau head believes the incumbent should have.

6. After the three candidates who have passed the civil service tests with the highest grades have been certified for appointment, the bureau head should be given opportunity to interview them and to express his opinion to the industrial commission relative to their qualifications before final selection.

Book Reviews and Notes

British Health of Munition Workers Committee Memoranda. By Great Britain Ministry of Munitions. London, Wyman, 1915 and 1916. (Also reprints by United States Bureau of Labor Statistics, *Bulletins No. 221, 222, and 223.*)

Already, consequent to America's entry into the world war, proposals are being made to break down protective labor standards in the mistaken belief that such standards reduce output. The experience of Great Britain, as described in these fifteen memoranda, proves that the breakdown of labor standards defeats its own end, and that maximum output can be secured only through regulation of hours and through good working conditions.

The committee was formed as the result of widespread complaints, following a considerable relaxation of labor laws, of lost time and failure to maintain output, on one hand, and, on the other, of the "sweating" of munition workers. Particularly striking are its opinions on seven-day work. It believes that "if the maximum output is to be secured and maintained for any length of time a weekly period of rest must be allowed. Except for quite short periods continuous work . . . is a profound mistake and does not pay—output is not increased."

A special statistical study of daily hours in relation to output showed that, for the largest returns from men on heavy and from women on moderately heavy work, weekly hours should be fifty-six or less. For lighter work somewhat longer hours are not disadvantageous. But the committee notes that "if men are asked to work for fifteen hours a day for weeks and months on end one of two results must follow; either the health of the workers will break down or they will not work at full pressure. In either case output must suffer."

The special need of protecting women and children because of the direct influence of their health conditions on the future stamina of the race is also emphasized. In the case of women workers "Conditions of work are accepted without question and without complaint, which, immediately detrimental to output, would, if continued, be ultimately disastrous to health. It is for the nation to safeguard the devotion of its workers by its foresight and watchfulness lest irreparable harm be done to body and mind both in this generation and the next." With regard to children the committee holds that "At the present time when the war is destroying so much of its best manhood, the nation is under special obligation to secure that the rising generation grows up strong and hardy both in body and character. It is necessary to guard against immediate breakdown, but also against the imposition of strains which may stunt future growth and development."

The judgment of the committee was that "taking the country as a whole, the committee are bound to record their impression that the munition workers in general have been allowed to reach a state of reduced efficiency and lowered health which might have been avoided without reduction of output by attention to the details of daily and weekly rest."

Following the recommendations of the committee, in many cases hours were shortened, and much attention was paid to supplying lunchrooms, washing facilities and other provisions for safety, health, and comfort. Competent observers believe, however, that on the whole better results would have been attained if pre-war standards had never been relaxed.

M. A. H.

Social Insurance: An Economic Analysis. By R. M. WOODBURY, New York, Holt, 1917. 171 p.

The author places before us the question whether the advantages of social insurance are sufficient to outweigh the three possible disadvantages of economic burden, decrease in thrift, and increase in accidents. The alleged economic burden upon industry he finds from German experience to be "but a small and relatively unimportant part of the total cost of production," which has proved rather a stimulus than a hardship. Admitting that it falls most heavily on the economically weak, he concludes that the burden is usually compensated for by savings in cost of production, and in any case is relatively of such slight importance in comparison with other factors determining the location of capital and the psychology of the wage bargain that it does not affect either capital or wages appreciably. "Even if the most extreme case is considered—where a single state adopts suddenly social insurance to the full extent—the burden which cannot be otherwise met is so small that it would have a negligible effect when compared to the other conditions determining the advantages of the state for industry."

The analysis of thrift is excellent. Dismissing the argument that we should weed out the thriftless by refusing to compel all to insure, with the retort that thrift cannot be proven an inherited character, the author argues that thrift is rather a social product, stimulated both by encouragement in the form of subsidies and by habit inculcated by compulsion. Warning is given against any form of pension which penalizes thrift by discriminating against possession of savings.

German accident statistics cited show a decrease of serious accidents since the introduction of social insurance, the decrease taking place largely in the group described as "due to the employer's fault." In considering accident prevention the importance of the form of organizing administration is pointed out. The author considers that the organization of accident prevention in Germany which concentrates the responsibility and the cost upon mutual employers' associations "is admirably adapted to securing effective safety conditions in industry."

Upon this basis the conclusion is reached that "the balance of advantage is in favor of the policy of compulsory insurance."

I. S.

Conditions of Labor in American Industries: A Summarization of the Results of Recent Investigations. By W. Jett Lauck and Edgar Sydenstricker. New York, Funk and Wagnalls, 1917. xi, 403 p.

To those who have looked forward to the publication of the investigations made for the federal Commission on Industrial Relations, this volume by two of the commission's investigators may prove disappointing. It contains not the results of any first-hand field investigations, but a summary of official and unofficial reports already in print. However, the book will undoubtedly prove convenient and valuable for reference, especially to those to whom the original sources are unfamiliar or inaccessible.

The data, which are mainly statistical, cover workers in manufacturing and mining industries, for which the largest amount of material is available. Subjects treated include the racial, age, and sex composition of the labor force, wage rates and actual earnings of the worker and the working family, unemployment, hours, accidents, sanitation, welfare work, scientific management, living conditions, and the health of the wage-earner as affected by working and living conditions. Comparatively little discussion or interpretation of the facts presented is given, though the authors have throughout laid stress on the earnings of the worker as the crux of the labor situation, as is especially brought out in the closing chapter on "the adequacy of wages and earnings." The facts assembled confirm the belief of most students of social conditions that the wages received by "a very large proportion, perhaps a half of the wage-earners' families in the principal industries of the country" in the last decade have been below "a reasonable minimum for healthful, efficient, and decent living for a family of the ordinary size." The evidence as to the prevalence of sickness and the part which it plays, in turn, in creating pauperism, might be used as a text on the necessity of compulsory health insurance.

C. T. W.

Industrial Conditions in Springfield, Illinois. By Louise C. Odencrantz and Zenas L. Potter. New York, Russell Sage Foundation, 1916. ix, 173 p.

This report presents a clear picture of the main features of working conditions in a typical middle-western town of 50,000 inhabitants, nine-tenths of whom are native born. Industrial safety, factory inspection, workmen's compensation, child labor, wages, irregularity of employment, work of the public employment bureau, working hours, and the effects of these factors on 100 representative wage-earning families are included. The stated purpose of the report is "to view industry in Springfield from the angle of social welfare and to examine the needs disclosed." Among the practical suggestions offered for immediate improvement are numerous changes in labor legislation, including consolidation of the various enforcing agencies into a single industrial commission, a compulsory compensaton law, one day of rest in seven, reduction of women's daily hours from ten to eight and

prohibition of night work, an hours law for men, making evasion of the child labor law more difficult, and an investigation of health insurance.

New Ideals in Business. By IDA M. TARBELL. New York, Macmillan, 1917. 339 p.

Interesting popular account of improvements in hours, wages, and working conditions, and experiments in welfare work started by industrial concerns under scientific management. The relative extent of the movement is not discussed. Only a slight treatment of the attitude toward trade unionism and collective bargaining and of the fixing of basic wage rates.

Casual Labour at the Docks. By H. A. MESS. London, Bell, 1916. 147 p.

Splendid description of the London docker in his struggle with the evils attendant on casual labor. The chaotic manner of hiring, approaching in some phases the methods of the slave market, is vividly pictured, and irregularity of earnings is discussed from the scanty data available. Methods of reform now in operation, such as the list system of classifying men and giving preference to the steadier workers, and the tally system of employing only men now in the occupation, are described, and further reforms are suggested.

Occupations from the Social, Hygienic, and Medical Points of View. By THOMAS OLIVER. Cambridge, University Press, 1916. 110 p.

Takes up briefly questions of air and ventilation, fatigue, general sanitary condition, age, fitness to occupation, and sickness rates. Particular emphasis on the more harmful occupations.

Governors' Messages. By H. W. WILSON Co. Bulletin of the Public Affairs Information Service, Vol. 3, No. 20, March 17, 1917. White Plains, N. Y. 23 p.

Digest of the messages of governors to the legislatures convening early this year. Subjects dealt with include child labor, employment agencies, factory inspection, hours of labor, minimum wage, old age pensions, workmen's compensation, health and social insurance.

Workmen's Compensation Acts: A Corpus Juris Treatise. By DONALD J. KISER. New York, American Law Book Co., 1917. 146 p.

Compact treatise on the legal interpretation of all phases of workmen's compensation. Such troublesome questions as constitutionality, employees and employers included within the scope of compensation, and injuries for which compensation may be had are covered. Appropriate case references are given throughout.

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